United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7557 & 7572 & 7589

United States Court of Appeals

For the Second Circuit

ANTHONY PEREZ, JR.,
Plaintiff-Appellant-Appellee,

against

MUHAMMAD ALI a/k/a CASSIUS CLAY,
Defendant and Third-Party Plaintiff-Appellee-Appellant,

against

AMERICAN BROADCASTING COMPANIES, INC. and ABC SPORTS, INC.,
Third-Party Defendants-Appellees-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

Volume II—Pages 309 to End.

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PAGINATION AS IN ORIGINAL COPY

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Q At the time you made those statements, Mr. Ali, isn't it a fact, sir, that you were mad at Perez --

THE COURT: I assume you mean angry.

MR. SULLIVAN: I apologize, your Honor.

A No sir, not him. I was angry.

A I wasn't mad, but I was angry.

Q Isn't it a fact, Mr. Ali, that you were angry?

MR. SHARFMAN: The witness didn't finish his answer.

MR. SULLIVAN: I didn't finish my question, your Honor.

THE COURT: Finish your question first.

Q Isn't it a fact that you were angry at the time at Mr. Perez and that at the time, you said that you didn't mean that Mr. Perez was paid by gangsters and had a bet on Frazier?

A Yes, I meant it. I wasn't angry at him. I am not angry at him now. God will punish me. I am angry at what he allowed and what the officials -- and what Cosell was pushing. I was angry at the injustice portrayed and the foul blows, 154 foul blows on American television right before the public and with everybody watching it and nobody really protesting.

I was angry at that. I am not angry at him.

Q When you say that Cosell was pushing, what

do you mean?

MR. SHARFMAN: Objection, your Honor.

THE COURT: You may answer.

A Just his whole attitude, the way he was talking, that I had to watch him. I can't remember exactly what he said, but -- the interview will tell you.

Q All right, we will watch it.

Are you telling us, Mr. Ali, that after the Frazier fight, this man Perez, who you believed had been paid by gangsters and who had bet on Frazier and who had purposely stopped that fight in the second round, of stopping you from knocking out Frazier, you weren't angry at him?

MR. SHARFMAN: Objection, your Honor.

A Not at him --

THE COURT: That is argumentative. You may ask a proper question. You don't have to answer it in that form.

Q Were you, Mr. Ali, angry that Mr. Perez bet on Frazier, had been paid by gangsters, had stopped the fight in the second round on purpose.

Were you angry at that?

A I didn't know that for sure. I was angry at the things he allowed and the illegality and things he didn't see.

I was angry that he had okayed that. That led me to believe that something was funny like this. I don't really know that he was paid. I don't really know he had a bet, but I saw no other reason a referee could side with another man and allow him to hit me 154 times. I saw no way a referee could let a man kick at my groin and not say anything.

I saw no way a referee could say I was knocked down when the fight went the distance, and was really close, I would have lost my Championship because of a referee's decision, all of this.

I said why would he be after me, the same man that made that big mistake in New York? He seemed to be after me. This is what moved me to say what I said. Not that I am angry because I know he got a phone call, I know he was paid, but in justice. It must be something. Why would he do all this to me? This has never been done in the history of a fight.

In title fights you don't do something like this. I said there must be something shady about it. That's really what I believed. I didn't know who paid him or who made the deal, but the evidence -- why is he after me? That is my attitude.

Q Did you take into consideration in your belief

the fact that Frazier's manager Futch had complained about the fact that Perez favored you all through the Frazier fight in letting you hold?

A I don't know about that.

Q You don't know anything about it?

A No, sir.

Q Did you write about it in your book?

A I didn't write the book, sir.

MR. SHARFMAN: Objection, your Honor.

Q You didn't read the book?

A No, sir, not yet.

THE COURT: We had all of that yesterday, please don't go over that ground. I think we had the limits of that book --

MR. SULLIVAN: Your Honor, I have some other questions on it.

THE COURT: Go ahead and put the questions.

Q Did you ever sign a contract for money that said that you promised to read that book, to correct any mistakes, and to give them a non-fiction book?

Did you ever sign such a contract?

A I can --

THE COURT: This is not a lawsuit for breach of that contract, and you don't represent the people who

made that contract, and I am not allowing that kind of inquiry.

Q When you weren't angry at Mr. Perez after the Frazier fight, after the Wepner fight and after you were convinced, when you believed that he had bet on Frazier in the Frazier fight, that he had been paid by gangsters in the Frazier fight, that he had cheated you in the Wepner fight? Were you, after the Wepner fight, angry at what Mr. Perez did?

A Yes, sir.

Q You were angry?

A Yes, sir, angry to his actions and his refereeing and his judgment and not him. I am not mad at him.

Q Just his actions and his judgment?

A As a human being, I am not angry at him. He can't hurt me.

Q Did he try to hurt you?

A I don't know. His actions were to hurt me. He okayed the man who was trying to hurt me and let it go by.

Q Forgetting the okaying that Wepner did, when he got on Frazier and was paid by gangsters to try and make you loose, did he try and hurt you then?

MR. SHARFMAN: Objection.

A I can't say he was paid by gangsters. I can't say that he had a bet on the fight.

Q You can't say?

A I can't say he did. I believed he did. I can't say he did.

Q In the interview, Mr. Ali, in the interview with Cosell, do you say, I believe he did, or did you say he was paid, probably paid by gangsters, he had a bet on Frazier?

THE COURT: Which is the question you want to ask?

MR. SULLIVAN: I will take one at a time. I apologize, your Honor, I will withdraw it.

Q Take the first one, did you say, "I believe he was paid by gangsters," or did you say, "Perez was probably paid by gangsters"?

A Probably, I am sure.

Q Did you say, "I believe he had a bet on Frazier," or did you say, "He had a bet on Frazier"?

A You have got to listen to the tape.

Q Let's do that.

Mr. Ali, to save time, we while we watch the tape to hear what you said about the bet, you also wanted to watch the tape to remember what Cosell was pushing,

do you remember?

You said you wanted to watch the tape for that.

Would you try and do both while we watch the tape, all right?

(Video tape played.)

"MR. COSELL: And now as you can see, sitting with mein the studio, the Heavyweight Champion himself, Muhammed Ali. Let's get to the nub of the matter, quickly Champ. Do you think really that if you had pushed yourself you could have knocked Chuck Wepner out in the first two or three rounds?

"ALI: Probably could have, but it wasn't for sure. He's never been really knocked out. That was the first time I understand he was knocked down in his whole career of a hundred and something fights. But I could have tried and probably I would have gambled because if I didn't knock him out, I would have tired myself out. When you're going 15 rounds, it is best to pace yourself like I did."

Q This was not the tape?

A That is his first thing that --

Q That was the first time Mr. Cosell did that?

A Yes. I will make mention each time he did something, that I said pushing.

MR. ELDRIDGE: Your Honor, I object to that procedure.

THE COURT: I think so. Do you have a specific question? Let's get a specific answer. I am not having --

MR. SULLIVAN: Yes, your Honor. May I give the witness a pencil and paper in case he wishes to write notes?

THE COURT: Just ask your question. If the witness wants anything I am sure he can ask for it.

MR. SULLIVAN: Yes, your Honor.

(Video tape played.)

"MR. COSELL: And now as you can see, sitting with me in the studio, the Heavyweight Champion himself, Muhammed Ali. Let's get to the nub of the matter, quickly, Champ. Do you think really that if you had pushed yourself you could have knocked Chuck Wepner out in the first two or three rounds?

"ALI: Probably could have, but it wasn't for sure. He's never been really knocked out. That was the first time I understand he was knocked down in his whole career of a hundred and something fights. But I could have tried and probably I would have gambled because if I didn't knock him out, I would have tired myself out. When you're going 15 rounds, it is best to pace yourself like I did.

"COSELL: Second question. I got a feeling

during the fight that you were posturing, that you were toying with him. Indeed, in some respects, almost tormenting him, and I likened it, as you heard, to, perhaps, one of your fights against Patterson and your fight against Terrell.

"ALI: Well, call it what you may, that was my style that night ... was to stick him and move, lay on the ropes ... uh, wear him down and then, after I seen my opportunity, like I did in the 15th round, go get him. But that all had to be done to make the 15th round possible.

"COSELL: All right, what we're going to do, in just a moment, Champ, is take a look at some of the highlights of the fight and have you talk about them. The so-called rabbit punch sequences of the first round ...

"ALI: So-called ! They were dirty rabbit punches...

"COSELL: All right, we'll get to that in detail ... and --

"ALI: The referee allowed them. The dirt was allowed so I got dirty with him ... takes dirt to fight dirt.

"COSELL: Okay. Just a little more of the pugnacious nature of the Champion, who's not happy about what happened last Monday.

"ALI: Pugnacious? What do you mean, pugnacious? What do that big word mean? You went to law school ...

"COSELL: Truculent?

"ALI: Truculent.

"COSELL: Over-aggressive, militant.

"ALI: Over-aggressive, militant! He was the one. I was defending myself.

"COSELL: Champ, what we're going to do first is take a look at the rabbit punch sequences of the first round. You talk over them ... and express yourself as volubly as usual if you will. Here we go.

"ALI: Well, there was promoted before this fight that this man was going to throw dirty shots ... hitting behind the head. There he go ... right behind the head. That's totally illegal, and the referee's just as dirty as him. He didn't say nothing about it. Look at him. All them punches are illegal. I hit him back a' side his head ... and the referee will come in and he'll say something to us now ... because I'm doing it, too. See, in and he'll say something to us now ... because I'm doing it, too. I'm telling him now 'watch that sucker... he's doing it ... he's doing it.'

"COSELL: Well, actually ...

"ALI: He let him do it over and over and over. He just kept letting him do it, and I don't want that referee in my corner again because he was dirty.

"COSELL: That's your side of it. Tony ...

"ALI: My side of it ! I saw it's dirt, and the people watching television see the dirt. What you mean it's my side of it?

"COSELL: Tony Perez ...

"ALI: I saw the dirt.

"COSELL: Tony Perez says you outdid Chuck Wepner.

"ALI: Outdid him how?

"COSELL: In rabbit punching.

"ALI: He outdid me. He started the rabbit punching, and I did it since the referee wouldn't take the law into his hands, which is his job ... since he wouldn't do it, and I did it. Then he said both of us did it. And then, after I quit ... now if you watch that whole fight, all through the fight, after the beginning, I quit rabbit punching and I had to start holding my hand behind my head, and that dirty referee continued. He's dirty ...

"COSELL: Well ...

"ALI: ... and all the Puerto Ricans should be ashamed of him because he is Puerto Rican.

"COSELL: Well, I don't think that's necessary to say ...

"ALI: I think it's necessary.

"COSELL: ... I think it is intemporate ...

"ALI: It's necessary ... I have too many good Puerto Rican fans ...

"COSELL: Furthermore, let's .. let's face this fact ...

"ALI: I have too many good Puerto Rican fans for ... for somebody to allow somebody like that to get me on television and fighting a white man ... doing everything to take my title ... that's what it was ... a conspiracy, and it was all to let anything happen to take my title, and I'll blow my own damn horn because I'm free. He was dirty ... the referee was a dirty dog and he was dirty and the world see it and you getting on television using ABC to promote the dirt and to say that I'm the one.

"COSELL: Are you all done?

(Voice from unidentified person in studio)

"Watch it Howard.

"COSELL: Now that you're done, just open up that fist and listen to me for a minute.

"ALI: I'm serious.

"COSELL: Tony Perez refereed your second fight against Joe Frazier.

"ALI: And he did another dirty thing. The bell rung ... he started to say the bell rung.

"COSELL: ... and Frazier and Eddie Futch, Frazier's manager, said that Perez favored you ... that you ...

"ALI: How could he favor me ...

"COSELL: ... were holding throughout the (unintelligible -- could be 'night'.)

"ALI: How could he favor me, when tyey talking ... what they favor Frazier. I had the man knocked out and he was almost ready to fall and he stopped it and said the bell rung and made a mistake and the damn bell didn't ring, messing me up from knocking out Joe Frazier. I had Joe Frazier going and the world saw it, and he stopped the fight and said go to your corners pretending he thought the bell rung. That wasn't it ... he didn't want me to knock out Frazier.

"(Unidentified voice in studio)

"Got lights on the pole.

"COSELL: YOu all done?

"ALI: They got lights on the pole, Bundini just said, ... got lights on the pole to show (unintelligible could be 'hin') the round wasn't over. He didn't see no lights.

"(Unidentified voice in the studio)

"That's right.

"ALI: He was paid probably by some gangsters

or somebody ... uh ... to ... uh ... he had some money bet on Joe Frazier.

"COSEL: Well, that's just absurd ... but we could go on ...

"ALI: That ain't absurd. You want to attack me ...

"COSELL: I'm not attacking you, I'm --

"ALI: ... and let this dirt get by. You going to let this dirt get by on me ...

"COSELL: I'm trying ...

"ALI: .. then I'm going to defend myself.

"COSELL: ... I'm trying to state the case of a man who's not here to face you and answer you head to head.

"ALI: Well, he should be here ...

"COSELL: Now, you've had your say...

"ALI: ... because the ... the camera speaks ... you keep on showing it (unintelligible could be 'and') I'm going to have my say and the camera's going to have a say, because he don't need no say. We see the dirt.

"COSELL: All right, let's go on ...

"ALI: Let's keep (unintelligible -- could be 'on'.

"COSELL: ... with the next highlight of the fight, the so-called knock out of the 9th round ... and I want you to observe ...

"ALI: He stepped on my foot. He didn't knock me down.

"COSELL: We will get to that issue in just a moment. But let's take a look at the alleged knock-down and you talk over. This is 9th round ...

"ALI: Well, he was so dirty ... he kept stepping on my toes all through the fight. It's an old trick an old professional's got. You step on a man's toe and push. There he go. (Unintelligible) push me down.

"COSELL: But what about that right?

"ALI: Aw, that right. How's a right on my side of my heart going to knock me down.

"COSELL: Well, here it is in slow motion.

"ALI: (Unintelligible) We got films. You got a paper you can show. The camera going to show. He stpped on my toe. He's right on my toe.

"COSELL: All right, now you've made a fair point. The camera doesn't show.

"ALI: There you go.

"COSELL: This photograph is from the Cleveland ...

"ALI: That's dirty.

"COSELL:..Plain Dealer.

"ALI: All that dirt was allowed that night by all the officials. So I did my right.

"COSELL: In other words, that was Wepner's foot on yours.

"ALI: He did that all through the fight.

"COSELL: And did that cause you to go down?

"ALI: When you're leaning backwards, it's an old trick ... Archie Moore will tell you ... old great fighters, Jack Dempsey will tell you, Sugar Ray Robinson will tell you... when you step on a man's foot and you got him going backwards and you hold him, he'll fall. It's a natural thing when you're leaning back and you can't get your grip and you get you you off ... just like you see me right now. I'm off balance ... his foot's on... on my foot and ... and while I'm leaning back, he just hold it and you automatically fall because you can't pull yourself out. All that dirt was allowed ... all of that dirt, and I couldn't do it. I ... he fought me dirty, and I him back, and he got on me for getting him back. If I hadn't of hit him back, wouldn't nobody say nothing about the dirt. George Chuvalo's another dirty fighter ... allowed to hit me in my private fifteen times a round, and nobody said a damn thing. I'm going to blow my own horn. There'll be no more dirty fighting, because if you hit me low, I'm going to hit you back low. If you hit me behind the head, I'm going to knock you back behind your

head. If you s -- .. and he kicked at me, another thing, too, he did dirty. The man actually took his knee and tried to knee me. --

"COSELL: You finish ...

"ALI: I know your film didn't show that, did it. You're film was at the wrong angle ...

"COSELL: (Laughing.

"ALI: Yeah, uh huh ...

"COSELL: (Laughing) You finished with your tirade? I want --

"ALI: Tirade?

"COSELL: ... to say one thing. Tony Perez says that you're embarrassed by your bad showing ... and that you're taking it out on him.

"ALI: Yeah, I'm embarrassed ... Yeah I'm embarrassed. I'll tell you what. You tell Ton Perez ... to meet me ... I'm tired of him. I done made you famous, I don't want to make him famous either, don't nobody know this little old referee. But all through the fight film, this man hit me illegal on up until the last knockout. This man kept hitting me behind my head, and why is it that you, on nationwide TV, why is that Tony Perez, why is it that all the boxing officials allow this dirt on Muhammed Ali?

"COSELL: Well, I had absolutely nothing to do with it.

"ALI: If you whup me, take my title clean. I whupped Sonny Liston ... I got it clean. I defeated it some fourteen, fifteen times clean. You took my ... they took my title for four years ... I came back and won it back and whupped George Foreman clean, and if you whup my behind, whup my behind fair. We don't need no dirt.

"COSELL: Okay, Muhammed. An embattled Muhammed Ali ... we'll be back with the highlights of the knockout sequences in just a moment."

THE COURT: I think that we had that at least three and possibly five times, so we won't have it again. It has been demonstrated,we won't have it again unless the jury requests that it be played again.

BY MR. SULLIVAN:

Q The conspiracy that you talked about in the tape to take your title away before the Wepner fight, will you tell me that Tony Perez was involved in that conspiracy?

MR. SCHARFMAN: Objection.

THE COURT: You may answer.

A His actions made me believe so, yes, sir. I don't know for sure. But his actions -- the

only reason I could figure is that something like that was involved. What reason would -- what was in it to him? Why would he have allowed this to happen.

He is supposed to be a good referee. He says he is a good referee. He claims he has been a good referee. Why he would let all this go?

Q Sir, at the beginning of your answer you said I know, and you said he is supposed to --

THE COURT: Please, do not repeat testimony. That's not your function.

Q Mr. Ali, did you know he was a good referee at that time?

MR. SHARFMAN: Objection, your Honor.

A He wouldn't be hired by the greatest Boxing Commission in the world if he wasn't a good referee. That's why I know that if he is and he should be a good referee.

He wouldn't deliberately allow and not see so much if there wasn't something funny involved.

Q This greats Boxing Commission that ever lived --

A I didn't say that. I didn't say the greatest Boxing Commission that ever lived.

Q This greatest Boxing Commission --

A If I said that, I don't remember.

Q Well, this Boxing Commission that you are talking

about, this is the Ohio Boxing Commission that was formed one week before the Wepner fight and had never been in existence before, correct?

A No, I said the New York Boxing Commission.

Q You are telling us, sir, that the New York State Boxing Commission was the Boxing Commission that hired Tony Perez to referee the fight inCleveland, Ohio?

MR. SHARFMAN: Objection, your Honor.

THE COURT: The form of the question is objected to, and the objection is sustained. Put another question.

Q Mr. Ali, you wanted to watch the television show before answering --

THE COURT: Please, you are making a speech.

MR. SULLIVAN: Yes, your Honor.

Q What did you mean --

THE COURT: At this point, I don't want you to do it again. I am suggesting to you not to make speeches, and that's a warning.

Q Mr. Ali, did Howard Cosell agitate you on that television show?

MR. SHARFMAN: Objection, your Honor.

THE COURT: You may answer.

A You can't say that it was his intention, sir, but he did want to agitate me. He kept me on guard.

Q Would it be fair to say that he egged you on in that interview?

A No, sir.

Q Mr. Ali, while we were watching that film, and I was standing up there, did you not five or six times quietly tell this jury that, see, he keeps agitating me?

A No, sir, I wasn't talking to them. I was talking to you.

Q Did you not say it five or six times to me?

A Yes, sir.

Q You did say it?

A Yes, sir. I told you that I want to tell you, so you won't have to keep cutting it off, every time he does it. I was just saying this -- what you thought you would find I notice you didn't find. I wanted to keep telling you. I told you that he was agitating me. You said we will play it. Every time he was agitating I made mention, there it is; me and you were talking.

Q Isn't it correct that you told me five or six times there he is, Cosell is agitating me?

A Yes, sir.

Q Which is it? Did he agitate you during that program?

A No, he didn't.

MR. SHARFMAN: Objection, your Honor.

THE COURT: You may answer the question.

A He didn't agitate me at that moment. I was showing you that is what he was trying to do, he is agitating me. I don't know if that was his intention, but that is what it seemed to be. I don't know if he really wanted to agitate me.

Q Did you believe that was what he was trying to do?

THE COURT: This case is Perez and Ali and Perez. That has nothing to do with this case.

MR. SULLIVAN: Plaintiff requests a recess, your Honor.

THE COURT: No, we will go ahead.

Q Mr. Ali, I am going to show you the Wepner fight, not the interview, and ask you to comment on it, sir, and start with the first round.

THE WITNESS: The whole thing?

MR. SHARFMAN: Objection.

Q Yes, sir.

THE COURT: Wasn't this gone over yesterday, Mr. Sullivan?

MR. SULLIVAN: Not with Mr. Ali, your Honor,

it wasn't gone over once.

THE WITNESS: Can I have a notebook?

THE COURT: Mr. Ali, so that there will be no confusion about it, I don't want you to have any side comments with Mr. Sullivan.

You will have all of Mr. Sullivan's statements and your statements on the record, and there is to be no comments in between.

THE WITNESS: All right.

THE COURT: What Exhibit is this?

MR. SULLIVAN: Plaintiff's Exhibit 1, your Honor.

(Video tape played.)

"COSELL: -- Ali quickly dancing, circling to the left and back as you can see to the right, back again, not even seeking thus far to strike a blow.

"Wepner the pursuer, looking to get at Ali. Ali quickly against the ropes and just as quickly off them. Still hasn't thrown a punch. This kind of tactic being mildly capitvating a crowd in the beginning once it has seen that Ali could move this way endlessly. There you saw him with his little tricks using his feet and the crowd reacting. He fought this way in the second fight against Patterson for four rounds, never even deigning to throw a punch, then he started working on Floyd.

" Ali against the ropes, Wepner flailing away. The rope tactics became the dominant theme of the fights against Foreman. The rope tactics worked against Foreman as George punched himself out.

"But in the first fight against Frazier, the rope tactics cost Ali dearly. Wepner looking to get at Ali. Missing there as you can see and missing again, first a long right, then a long left. Ali covering up with gloves in front of the face and a quick complaint to Tony Perez about an alleged rabbit punch by Chuck Wepner.

"There is Wepner working to the back of the head again on the neck. A rabbit punch. Back in the '20s Jack Dempsey knocked out Bill Brennen with a rabbit punch, and presumably, the rabbit punch has been outlawed ever since.

"There is Wepner again to the back of the head and again, Ali pushing him off. Ali has done no punching whatsoever in this round of Wepner -- oh, Ali responds in time feeling he has had enough of the rabbit punch, he used it himself, four, five, maybe six times in a row. Ali motioned, touching the back of his head, look at that, his arm thrusint off Tony Perez, Perez warning Ali even as he had warned Wepner earlier. Through the whole action in the first round it has been in the

form of rabbit punches. Ali in the corner covering up. Ali not even paying attention to the adversary Wepner but complaining again to Perez about the rabbit punch, and Perez again cautions Wepner. As the countdown continues toward the end of round 1. Hardly polished exhibition of boxing, is it? Instead, instant complaints by Ali over rabbit punching, and Ali's use of the rabbit punch himself. The end of round 1, the bell strikes, Perez separates the fighters. Ali winds up the round again complaining to Referee Tony Perez.

"Wepner in his corner and it is about time we took a look at those rabbit punches in slow motion. First Wepner with Ali against the ropes. You saw that. Over the head and behind the head on to the neck. There is another, Wepner connected. Now pushed off by Ali. Ali covering up. There it is. That's the quick flurry of return rabbit punches by Muhammed Ali. Round 1."

(end of video tape.)

THE COURT: It is stipulated that the reporter need not take down the audible portions of Exhibit 1, and if necessary, counsel will stipulate to its content at another time to avoid the strain on the reporter and otherwise.

BY MR. SULLIVAN:

Q Mr. Ali, did you see any fouls in that round committed by Wepner?

A Yes, sir.

Q What were the fouls?

A First there were six rabbit punches with no referee warnings, then I went through about six in my fashion, then after that he threw one, two, three four, five, six, seven, eight more with no warning.

Q Did you throw any?

A I threw the fast six protest punches.

Q When you say no warning, do you remember of your own recollection that Mr. Perez did not orally warn Mr. Wepner about the rabbit punching without physically showing him this?

A No, he didn't.

Q He did not?

A No.

Q During the entire first round?

A Not that I recall. I know he didn't. I'm sorry, sir. After I did the protest, he warned me first and then told Wepner, no more punches.

Q Do you remember what he said specifically?

A No.

Q Is it not a fact, sir, that during a round while the fighting was going on, a fighter's seconds are supposed to be seated and silent?

MR. SHARFMAN: Objection.

THE COURT: I will sustain that objection. It is irrelevant to the issues before the Court.

Q Mr. Ali, do you remember whether or not Mr.Perez went to either Mr. Wepner's corner or your corner at the end of the first round to warn either of you about rabbit punches?

A If he did, I don't remember it. I don't. I can't recall it. I wouldn't say that that was the first round you just saw. It got worse as he went.

Q The question is whether or not you remember.

A No, sir.

Q Is it "No" that he didn't or "No" that you can't recall?

MR. SHARFMAN: Objection, your Honor.

A I don't remember.

Q Is it the custom in boxing that if a fighter is not heeding a referee's warning the referee will frequently come over to the corner and warn the referee directly in this manner?

THE COURT: You say warn the referee?

Q Warn the fighter.

MR. SHARFMAN: Objection.

A This never happened to me. I can't recall referees coming to tell me to fight clean. It's never happened before that. Never have that problem.

Q Has the referee ever warned you against dirty fighting?

A Dirty fighting? No, sir.

Q Has the referee ever warned you against fouling?

A Fouling?

Q Fouling.

A No, sir, not as I can recall, not me. Everybody knows me, my history.

Q Not you?

A Everybody knows my history.

Q Mr. Ali, in the 3rd round of the Norton fight which was fought two weeks ago in Yankee Stadium did the referee not break the fighters apart, grab your arm off Norton and say to you, "If you do that one more time I'll take the round away"? Did that happen?

MR. SHARFMAN: Objection.

THE COURT: Objection sustained. I'll ask the jury to disregard the contents of the question. It is not evidence and has not been established in this case in any way, shape or form.

It does not relate, in the Court's opinion, to the issues you are called upon to decide.

(Pause)

THE COURT: Do you want to play something from Exhibit 1?

MR. SULLIVAN: Yes, Round 2 on Exhibit 1.

THE COURT: Announce those things so they appear on the record, Mr. Sullivan, please.

MR. SULLIVAN: Yes, sir, your Honor, I will.

(Videotape played.)

Q Mr. Ali, did you see any fouls by Wepner in Round 2?

A He threw one rabbit punch with no warning from the referee. He threw two with no warning from the referee. He threw three, he threw four. I think about after the fourth rabbit punch I protested with two light rabbit punches. Then the referee broke us up. He warned the both of us. Then Wepner threw another rabbit punch and no warning and after that two with no warning, three with no warning, four, five more rabbit punches went on with no more warnings.

Q Did you, sir, do any holding in that round?

A No, sir. I was tying him up because my head start hurting in Round 2. I was not going to continue to let him pound at me, so I had to tie him up.

Q What do you mean by "tie him up"?

A Tie him up, clinch him till the referee comes. The referee says, "Break." If I was illegally holding the referee would call it.

Q If the referee wasn't calling rabbit punching why would he call the holding?

MR. SHARFMAN: Objection, your HOnor.

THE COURT: Sustained.

MR. SULLIVAN: Round 3, Mr. Ali.

(Videotape played.)

THE COURT: The request for an oral statement of the physician will be taken up at the noon recess.

MR.SULLIVAN: Thank you.

Q Mr. Ali, did Wepner commit any fouls in that round?

A Yes, sir, he threw one rabbit punch with no warning in the 3rd round, a second rabbit punch, the third one with no warning, the fourth one with no warning.

At that time I retaliated with three small protest rabbit punches.

Five with no warning, six with no warning, seven with no warning, eight with no warning, nine, ten, elevent, twelve, thirteen, fourteen with no warning. Fifteen with no warning. Sixteen, seventeen more, seventeen with no warning and now I'm going to say one thing I left out. There are so many fouls involved I can't count them. He hit me with ten or twelve kidney punches that round.

I couldn't say the first round, there was so many kidney punches in the first round. There were a lot of kidney punches. It is hard to count both, it happened so quick.

I'm just putting rabbit puches. I would at that time -- I bet my life that at least forty kidney punches were thrown. There was 154 rabbit punches uncalled, illegal let by the referee. Kidney punches, I'll be safe to say forty. You can't -- shouldn't let two kidney punches without points taken off and here's forty without the referee --

Q What is the area of a kidney punch?

A Show the rest of the films.

Everything from here, from here in the stomach and you shouldn't be hit here (indicating). If you watch that film all through the fight I was hit here all through the fight and no protest from --

Q Mr. Ali, when you say "here" --

A That is wrong.

Q When you indicate "here," is that totally on the back?

A No. All right, in here (indicating). Anything-- you shouldn't be right -- now, I'm facing a man. There is no reason for a man to hit you back here, I would say from right here to right here on the back (indicating), and all I took was punches back here.

Q There is a place on your body where your ribs come together, the center line of the ribs.

A I want to say this: I don't know exactly where

the punch starts, but I know that they were kidney punches.

Q You think they were kidney punches but you don't know?

A You could see them.

Q But you don't know the area where a kidney punch is; is that correct?

A Yes.

THE COURT: That is not what the witness said.

Q Do you know where the line is where a punch becomes a kidney punch?

A Not exactly, no.

Q You don't know?

A Back here, I know is a kidney punch. I don't know where the lines are, but I know right here is a kidney punch.

Q In the back?

A Not exactly in the back, right here (indicating).

THE COURT: Pointing to the area past the center line of the ribs.

B2 A Yes, past the center line of the ribs, that is right. I know past the center line of the ribs, I would say the kidney punch.

Q Is this area in the front past the center line of the ribs?

A No.

MR. SHARFMAN: Objection.

A No.

Q Where is the area for a rabbit punch?

A My pants are turned out because I'm getting too thin (indicating).

THE COURT: The rabbit punch?

THE WITNESS: Rabbit punch. Back here on the neck. You watch. His hand comes all away around me. It comes back behind me. It is real easy to see.

Q If a man swings at you and the blow lands on the side of the head partially and partially on the back, is that a rabbit punch?

A Yes. You don't have a blow back here. Maybe in boxing --

Q My question is, sir, suppose his glove is partially on the side and partially on the back, is that a rabbit punch?

MR. SHARFMAN: Objection.

A You don't -- if you are saying that he don't do it deliberately, he can't be dong it 154 times, say it's an accident and stay a professional boxer in a fight for the world title. That can't happen. I don't know how you can talk about this.

MR. SULLIVAN: Will your Honor direct him to answer the question.

THE WITNESS: I answered your question. I don't know how you can make an argument about this.

Q If a boxer hits partially --

A I'm not going to get tricked in. I'm not an expert at that. I don't really know. I know back here partially. I know right where he kept hitting me all in the back. That is a rabbit punch. I don't know where it exactly starts. You can't trick me.

THE COURT: What he is asking is supposing the blow lands on the side of your face and slides off to the back of your neck, that is, when the blow is on the side and slides off to the back of your neck.

THE WITNESS: No, that couldn't be a rabbit punch, but the punches he hit --

Q Suppose the punch lands like on the back of the ear and slides off. Is that a rabbit punch?

A Yes, lands on the back of the ear, yes. You don't hit nobody in the back of the ear. If the punching -- if he just faces you, you don't hit no one back here.

Q Were all 154 of Mr. Wepner's rabbit punches punches to the back of your head?

A I'd bet my life on it. It may have been 152 or

153, but we can say -- sir, twenty-five is illegal. I suppose you are not supposed to get two of them. I know thirty were--

Q Are you telling us, when you say there was no warning by the referee each time you recite the amount of fouls, that there is no warning by the referee physically when he goes like this (indicating), or are you telling us that there is no warning even orally by the referee?

A Only a couple of times as I protested he might give a slight warning. He may have did it once. I don't remember, I don't remember, but from about, say, the 5th round on there was no kind of warning, no hand action and no mouth action.

Q From the 5th round on no warnings at all?

A As I recall. The film is here. The films don't lie. I'm just telling the truth.

Q When you are watching the films, can you see whether Mr. Perez is orally warning the fighters?

THE COURT: That is a jury question. Let's not get into that.

THE WITNESS: I want to say one thing, sir.

THE COURT: No, just wait for a question.

THE WITNESS: No more, yes, sir.

Q Did you do any holding in that round?

A No, sir.

MR.SULLIVAN: Round 4. Just cound the number of rabbit punches and anything else you want to watch.

(Videotape played.)

Q How many rabbit punches were there by Mr.Wepner in Round 4?

A One, the first with no warning, two with no warning, the third with no warning, fourth with no warning. Then I retaliated back with two light ones, and then he warned us. Then there was a fifth one with no warning, a sixth with no warning, seven, eight, nine, ten, eleven, and about nine or ten kidney punches.

Q When you say "no warning," does that include no oral warning?

A Yes, sir.

Q You remember that of your own recollection?

A One oral warning looking -- pat the head first. I had to do it. Then he came in after four. If I had not did mine he'd have got by with twelve rabbit punches and nobody saying nothing. In the meantime my head was hurting. My title was at stake, something that was not funny.

Q Did you do any holding in that round?

A No, sir.

I want to say one thing, holding, just holding is legal, but I don't think that nothing that I would do --

I can't hurt a man holding, if I did. If I did hold -- I'm saying whatever I do is to defend myself because the referee of the fight wouldn't do nothing, so am I wrong if I did tie him up to keep from getting hurt further? Am I guilty -- I'm looking right at him on my trial -- from keeping myself from getting dirt, looking at all the dirt. You can't argue saying I'm guilty for trying to keep myself protected. I don't understand that.

Q Mr. Ali, do you understand, sir, that we are not claiming that you should not have protected yourself; do you understand that?

A You keep saying "are you holding?" I keep tying him up, keeping from hurting me.

Q You understand that we are not trying this case because you were holding. Regardless of whether or not you hurt him, is holding a foul?

MR. SHARFMAN: Objection.

THE COURT: We have been over that subject with this witness and with other witnesses.

Q Isn't it a fact, Mr. Ali, that most of the time Mr. Wepner threw rabbit punches, that at that time his head was being held down by your glove?

A No, sir.

Q And then you were swinging blind?

A No, sir.

Q That is not true?

A No. Put the film on and show it.

MR. SULLIVAN: Round 5, and if you would, count the rabbit punches again.

(Videotape played.)

MR. SULLIVAN: Your Honor, if I may.

B3 Q Mr. Ali, while we watch this round, Round 5, would you just speak out for the jury so they will see each time you think there is a rabbit punch by Wepner? Okay, just say "Wepner" each time he rabbit punches.

A Say what?

Q Just say the word "Wepner" each time he rabbit punches.

THE COURT: He can say rabbit punches.

MR. SULLIVAN: He may have done that and then I'll want him to say Ali.

THE WITNESS: I'll say rabbit punch by me.

MR. SULLIVAN: Okay, thank you.

(Videotape played.)

THE WITNESS: Rabbit punch, rabbit punch too. Rabbit punch. Kidney punches, kidney punches, kidney punch. The referee don't say nothing at all.

Q How many rabbit punches in that?

A That was the least of all rounds, because I kept dancing and stayed off him. He threw at the most about five rabbit punches and about three kidney punches with no warning whatsoever.

Q No warning?

A No, sir.

Q Up until the last 10 seconds of that round, isn't it a fact that there were only two rabbit punches?

A Two?

MR. SHARFMAN: Objection.

Q Up until the last 10 seconds were there only two?

A You are tricking me now. I was just counting. Four rabbit punches.

Q Up until toward the very end of the round, for most of the round weren't there only two rabbit punches?

A No, if it was only two he is supposed to warn him. There was four.

Q Isn't it a fact that during those two rabbit punches for the first large part of the round each time a rabbit punch was thrown you were holding Mr. Wepner's head down?

A No, no. Oh, no, that is silly.

Q Mr. Ali, most of us know there is no Round 6.

The program didn't show Round 6, so we will have to show Round 7.

A All right.

THE COURT: You mean there was a Round 6 but it wasn't recorded?

MR. SULLIVAN: No, sir, it wasn't recorded.

Q Would you again, Mr. Ali, point out the rabbit punches to the jury?

A And the kidney punches, too.

Q All right. When you point out the rabbit punches would you say whether you are holding or not holding at the time; okay?

A Thank you.

(Videotape played.)

THE WITNESS: I will also say --

MR. SHARFMAN: I object to the instructions.

THE COURT: The witness will do the best he can.

THE WITNESS: I want to say by this time the referee is completely out of it. He don't warn nobody, so my defensive action was justified because the rules are to protect yourself at that time and I'm too valuable fighting without nothing because the referee wasn't in the fight and I have to protect myself.

(Videotape played.)

THE WITNESS: Rabbit punch, rabbit punch, rabbit punch; no warnings. Referee -- rabbit punch.

Q Were you holding him?

A No, sir. There was no warnings. I have a right to do what I want to do.

Rabbit punch, rabbit punch, rabbit punch, rabbit punch.

Q You weren't holding?

A No, sir, he was laying on me. Rabbit punch.

Q You weren't holding?

A No, sir, clinching. Two, three, four, five, six rabbit punches. I'm trying to protect myself. Nine punches illegal and the referee is right there. Rabbit punch.

Q You are holding?

A No, sir, I'm clinching. He's giving rabbit punches and kidney punches and the referee didn't say nothing and you are making me guilty for protecting myself.

Rabbit punch, two of them, two rabbit punches.

Q Mr. Ali, when you say clinching, if one fighter has his arm arm around the back of the neck of the other fighter and is holding him down, is that a clinch?

MR. SHARFMAN: Objection.

A Yes, it is a clinch. The man falls in. Many

times they fall in on me and when they fall in I'm naturally over the top of them, but I want to say one thing. One, two, three, four, five -- twelve rabbit punches with no help from the referee and whatever I do is to protect myself.

Q Regardless of what you do, if the man falls into you and you then hold his head down, is that a clinch or a hold?

A That is a clinch. I didn't tell him to fall under. Why is he laying his head in his chest? What am I to do?

(Continued on next page.)

Q When you say -- I believe you said before the referee is not in the fight, is that correct?

A I said up until -- now, the point we are at now, I cannot depend on the referee. I am looking at it. The people are looking at it. We can't depend on the referee to come in and stop the man from rabbit punching me. I have to do the best I can.

Why he is doing this, I don't know. My title is involved. Why he is siding with the man, I don't know. Something is funny.

Q He is siding with him?

A He would be siding with me if he let me do all that and get away with it.

Q Suppose he let you hold all through the Frazier fight?

A I wasn't holding.

MR. SHARFMAN: Objection, your Honor.

A Frazier butts.

Q We will see that fight later.

During the fight, did Mr. Wepner knee you in the groin area?

A No, he tried to.

Q Did he try to do it intentionally?

A Yes, sir. I hit the rope. I bounced off the rope,

and I am coming to him, and as I was coming to him I had to sidestep it.

(Indicating)

It was no accident. The referee saw it.

Q Isn't it a fact that Wepner threw a roundhouse right, totally missed, lost his balance and carried his leg over like this?

(Indicating.)

A That's so silly. No.

Q That's not what happened?

A No.

Q I think it is in this round, so let's watch.

(Video tape played, round 8.)

A That was it.

Q That was it?

A Yes. He came right to me with his knee up. Threw it up.

Q On purpose?

A That was an accident, I guess !

Q Didn't you tell us before it was intentional?

A You know it was intentional. I don't believe you can be a lawyer to ask me questions like that.

Q Let's just watch that part one more time.

(Video tape played.)

A Right now. He kicked right up, that was it. It was really plain. It was really plain. Now what do you say?

Another rabbit punch.

Q Is there any holding?

A No, clinching. They do that all the time in boxing. It is a clinch. A rabbit punch.

Q Any holding?

A No, a rabbit punch. Kidney, kidney, kidney. Rabbit punch, kidney punch, rabbit punch.

Q Was there any holding?

A No, I am clinching him. I am not holding him. Rabbit punch, rabbit punch.

Q After the foot came up, did Mr. Wepner go like this with his two gloves to you?

(Indicating.)

A The pitch indicated that he apologized. As if to say he kicked, about his being accidentaly that he kicked me. In the history of all boxing, I have had 190 fights, fighters don't kick. In Thailand they kick. In America, in title fights we don't accidentally kick at a man.

Q Are you saying that before he apologized, that he did purposely kick you?

A Yes, sir.

Q Isn't it when a man sticks up his gloves and apologizes he means to say I didn't mean that?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained. I think we will recess now. The jury has had a long day the reporter has had a long day. We will resume at 2:00 o'clock.

Spectators, will you please remain seated until the jury retires from the courtroom.

(Luncheon recess.)

THE COURT: The jury has now retired. I think Mr. Sullivan has a point of law that he wants to address to the Court in the absence of the jury.

Yes, Mr. Sullivan?

MR. SULLIVAN: Your Honor, it is Plaintiff's contention, your Honor, in this case that the main issue in the case is malice or reckless disregard for the truth.

With the burden of proof that the plaintiff has, the ultimate issue is the credibility of Muhammed Ali, the total credibility in general. I think the plaintiff's case is stating that when Mr. Ali said these things, and he now says that he believed them to be true, that we are saying that he is lying.

THE COURT: Now stop right there.

Is it your understanding of the law that you can call a witness to the stand and attack his credibility?

MR. SULLIVAN: Yes, your Honor.

THE COURT: You come back at 2:00 o'clock with any case authority that so holds and anything in the rules of evidence that so holds, and I will listen to the rest of your story at that time.

MR. SULLIVAN: Yes, sir.

THE COURT: If that is a fundamental error, you may decide that your approach is different.

MR. SULLIVAN: Yes, sir, may I --

THE COURT: For your immediate guidance, let me suggest to you that there is no objection to your calling a witness to the stand for the purpose of establishing the substantive claims that you may wish to assert.

If you do call such a witness, you are not bound by the responses that he makes on the substantive claims that are relevant to the suit. That does not li-ense you, when you call him as your witness, to call him for the purpose of disparaging him.

You look up the law and come back and tell me differently.

MR. SULLIVAN: Your Honor, may I argue another point, please?

THE COURT: You can assert another point, yes.

MR. SULLIVAN: I meant assert. I shouldn't say argue.

Your Honor, it is our intention that the guts of this case and the things Mr. Ali says about the guts of this case are directly contradicted in this book. As an example, Mr. Ali has said that Mr. Perez purposely stopped that fight in round 2, that he was paid by gangsters at the time, and that he had a bet on Frazier, and that's why he did it.

In the book he gives a totally different reason and states totally contradictory things.

THE COURT: Let me stop you there.

Please refer to your complaint in this case. Take a copy of it.

I will hand you, for your convenience if you haven't got it ready --

MR. SULLIVAN: No, I have it.

THE COURT: Tell me what paragraph of the complaint refers to the subject matter that you have just elucidated?

MR. SULLIVAN: Paragraph 16, your Honor, is one of the paragraphs that I would say discussed the very language of Mr. Ali as to that second round stopping.

THE COURT: Where is there any reference to gangsters

and bets in paragraph 16? Is there any, should I ask you?

MR. SULLIVAN: Yes, your Honor, there is.

THE COURT: Read the language to me, please, quote it.

MR. SULLIVAN: The end of the paragraph states, "He said he didn't see no lights."

"He was paid probably by some gangsters " --

THE COURT: We are talking about gangsters and bes. Don't throw me off with lights.

MR. SULLIVAN: I'm sorry.

"He was paid probably by some gangsters or somebody or he had some money bet on Frazier."

THE COURT: Is that the phrase that you want to call attention to?

MR. SULLIVAN: No, your Honor, frankly, the entire 15th and 16th paragraphs?

THE COURT: Have you established under direct examination of this witness any connection of this witness with the assertions in the book other than that he was paid to have the book made, and that it was prepared by somebody else, and that he didn't read it -- as a matter of fact, has read very little in his lifetime on any subject?

MR. SULLIVAN: Yes, your Honor.

The contract that Mr. Ali admitted that he signed, specifically --

THE COURT: Are you suing him for breach of contract?

MR. SULLIVAN: No, sir, but the contract specifically states that he read the book, he wrote the book, he corrected the mistakes --

THE COURT: Read the contract where it says he read the book. Tell me whether it says he is obligated to read it or whether it says he read it.

MR. SULLIVAN: Your Honor is correct. It states he is obligated to read it. We submit --

THE COURT: Do you mean to say you are suing him here for breach of his obligation to read it?

MR. SULLIVAN: No, your Honor, but we submit that it is a question for -- a fact for the jury as to whether or not they can believe that this man didn't read this book.

THE COURT: That is a collateral issue on a collateral subject.

You see, you are seeking to impeach his credibility after calling him to the witness stand.

If you have independent proof that he read the

book or that he -- or that there were circumstances from which it may be inferred that he associated himself with the statements in the book, that is something that you would have to present by evidence and not by calling Mr. Ali to the witness stand and obtaining his denial and then seeking, by inversion, to show that he should have done it.

MR. SULLIVAN: May I show your Honor the acknowledgement in the front of the book which Muhammed Ali testified that he signed?

THE COURT: Yes (handing).

MR. SULLIVAN: I just submit, your Honor, that that is enough for such an inference to be drawn by the jury.

THE COURT: Would you call my attention to the place where it says that Mr. Ali read the book.

MR. SULLIVAN: It does not say he read it, your Honor, but it says he reveals in his book many decisions and many things that have happened to him.

THE COURT: Does it say he revealed the things that are referred to in the Wepner fight and the Frazier fight?

MR. SULLIVAN: Yes, your Honor.

THE COURT: Wheredoes it say that?

You told me that this acknowledgement was an acknowledgement of the content of the book relating to Wepner and Frazier. Show it to me.

MR. SULLIVAN: Your Honor, the acknowledgement relates to the entire book.

THE COURT: The acknowledgement is a statement of the man about whom the book is written. Where does it indicate that the book is his product or that he adopted it?

MR. SULLIVAN: Your Honor --

THE COURT: If you write a book or a brief about a client of yours, would your client necessarily adopt it?

MR. SULLIVAN: Your Honor, this book is a book that has sold widely. Muhammed Ali has gone to stores, autographed copies, promoted its sale.

While doing so, it states right in the front cover, "The Greatest is Ali's own story."

For six years he worked, traveled and talked with Richard Durham. He said he answered a few questions. The entire book is written in the first person. I was this. He is now making a movie based on the book; the book is, he agreed in the contract, nonfiction.

THE COURT: You are not making a summation to the

jury now.

MR. SULLIVAN: I know, your Honor, I am sorry, but it is almost incredible for him to deny what is in the book, and certainly it is a question of fact for the jury.

THE COURT: Mr. Sharfman, what do you say to this?

MR. SHARFMAN: The witness' testimony is clear, your Honor, you can judge for yourself.

THE COURT: Mr. Sullivan is raising another point. He says there are not indicia from the signature and the autographing on the book to indicate that the subject was adopting for himself and permitting to be broadcast the statements attributed to the subject.

Why isn't there at least an issue that the jury should resolve on the basis of the testimony and the conduct of the parties?

MR. SHARFMAN: Your Honor, Mr. Ali was called by Mr. Perez as Mr. Perez' witness in this case. The question was put to him. He explained that he did not write the book. He did not read the book. I believe, sir, that for purposes of examining this witness this plaintiff is bound by that testimony.

THE COURT: No. I hav- already indicated to you what my own understanding of the law is -- that an

examiner is not bound by matters which are directly relevant to the issue that he seeks to prove.

He may call the adverse party and receive a denial, but nonetheless, told what he considers to be the truth of the subject matter. That is different.. Asking the witness about a fight that took place three weeks ago has nothing to do with this case, getting a denial and then attempting to prove the opposite. That's not directly relevant to the issues.

MR. SHARFMAN: My point, your Honor, is that that is a collateral point, and that's the question we have at the moment.

THE COURT: Is it collateral to know what the witness' statements and intentions were at the time? Isn't the state of mind of the witness a subject for the jury to resolve as a question of fact?

In order to determine whether or not there was, what the law calls, actual malice, you have to take the straws in the wind to see whether -- which way the wind blows and whether it adds up to the tornado that the examiner seeks to create.

I think you better all think about it, and we will have lunch and resume this pleasant discussion at 2:00 o'clock.

MR. SULLIVAN: Thank you, your Honor.

THE COURT: I will take the copy of the book in the meantime.

I take it, Mr. Sullivan, you have now put on the record everything that you felt repressed against stating during the trial, at least in its outlined form, so that my attention is called to what you are talking about, is that right?

MR. SULLIVAN: Not really, your Honor. I would --

THE COURT: I am not talking about your extrapolation or speech about the subject, but I want to know if you have any other points that should be called to my attention now for court rulings.

MR. SULLIVAN: I know there are others, your Honor. Frankly, now I can't think of them.

THE COURT: In other words, you didn't have any others in mind when you sent me the note that you wanted to have an oral hearing?

MR. SULLIVAN: That's correct.

THE COURT: To the extent that you have had an oral hearing, you have expressed all the things that you currently have in mind?

MR. SULLIVAN: Yes.

THE COURT: Thank you.

MR. SULLIVAN: May I point out to your Honor --

THE COURT: Just put a tab in there.

MR. SULLIVAN: -- the specific language of the second paragraph of the acknowledgement?

THE COURT: All right.

(Handing.)

(Luncheon recess.)

mcds 1

AFTERNOON SESSION

2:00 p.m.

M U H A M M E D A L I, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. SULLIVAN:

THE COURT: We will take that matter up with you later, that is, as to how to deal with it, Mr. Sullivan.

Show this to Mr. Sharfman and find out if there is any objection.

MR. SULLIVAN: Yes, sir.

THE COURT: Is there any objection?

MR. SHARFMAN: Yes, sir, I have an objection.

THE COURT: All right. Mr. Ali, would you be good enough to step down a moment? We are going to take a witness out of order. You may sit here or go back to the spectators' section, whatever you prefer.

(Witness excused.)

MR. SULLIVAN: Mr. Recht.

W I L L I A M R E C H T, 955 Benton Street, Woodmere, Long Island, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Recht, over the years what has been your connection with boxing?

A I'm a judge for the Boxing Commission.

Q A judge for the Boxing Commission?

A Yes.

Q For how many years?

A Almost 30.

Q Have you done any heavyweight championship fights?

A I have.

Q During those years as a judge for the New York State Boxing Commission, sir, have you come to know of the reputation of Tony Perez?

A I have known him, yes, sir

MR. SHARFMAN: Objection.

THE COURT: The objection is overruled.

A I have known him ever since he has been with the Commission.

THE COURT: He is asking you about whether you

know his reputation, not him individually.

THE WITNESS: As far as I know, it is very good.

Q Do you know, sir, of anything about the reputation of Mr. Perez that is not good?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

A No.

Q Have you ever heard anyone other than Muhammed Ali say anything bad about Tony Perez' reputation?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained as to form. If you wish to prove reputation evidence you'll have to ask the witness what he knows about the gentleman's reputation in the community or in circles in which he proceeds.

MR. SULLIVAN: Yes, your Honor.

THE COURT: What you are doing is cross-examining instead of proceeding on the direct examination, which is not in order at the moment.

Q Can you tell me what you know of Mr. Perez' reputation as a referee in the community?

A As far as I know, it has always been satisfactory.

MR. SULLIVAN: No other questions. Thank you, Mr. Recht.

THE COURT: Any cross-examination, Mr. Sharfman?

MR. SHARFMAN: I have no questions of this witness, your Honor.

THE COURT: Any questions, Mr Eldridge?

MR. ELDRIDGE: No questions.

THE COURT: Thank you, Mr. Recht, you are excused.

(Witness excused.)

THE COURT: Mr. Ali, will you please come back.

M U H A M M E D A L I, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. SULLIVAN:

THE COURT: All right, Mr. Sullivan.

MR. SULLIVAN: Thank you.

Q Mr. Ali, just a couple of questions before we go back to the tapes.

Is it a fact, sir, that in your career in boxing you have made it your custom to try and build up the gates by saying untruthful and controversial things?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Did you ever say, Mr. Ali, "I don't believe all the stuff I say" --

MR. SHARFMAN: Objection.

Q -- "I say it only to make people angry. Then I

go to the bank laughing."

MR. SHARFMAN: Objection.

Q Did you ever say that?

THE COURT: Sustained. The jury will ignore these questions and any content that may be thought to be implicit in the questions. They are not appropriate evidence for the trial of this case.

MR.SULLIVAN: Round 9.

THE COURT: You'll have to turn it around. Is that better?

THE WITNESS: Yes.

THE COURT: You can pull a chair up or you can stand.

THE WITNESS: I'll stand.

(Videotape played.)

Q Mr. Ali, my question is, sir: When you went down in the round, did you, after you got up, immediately after you got up and Mr. Perez came over and counted in front of you, did you complain at all at that time to Mr. Perez that Mr. Wepner had stepped on your feet?

A No.

I want to say something.

Q No. We'll have a question.

MR. SHARFMAN: The witness wants to explain.

THE COURT: He may explain when you question him.

Q Did you believe at that time that Mr. Wepner had stepped on your foot?

A I knew he did.

Q You knew he did?

A I felt it.

Q After a man goes down, when does the referee rule it as to whether it is a clean knockdown or not; when is that done?

A He puts it on the score card and he is supposed to, and I don't know exactly -- I don't know what a referee should do. They usually go over and tell their officials there was a knockdown and then to judge accordingly.

Q Isn't it a fact that he goes over to the official to indicate that it was a knockdown, picks up the count and then runs back to give the fighter the count so the --

A I don't know exactly what they do.

Q Prior to that time, did Mr. Perez run over to the timekeeper and pick up the count and run back to you?

A I don't know if he did that. I wouldn't know. I read in the paper -- I don't know if he did all that. I just had to get up.

THE COURT: The jury will disregard the question because it contains a statement that is not in evidence.

Just ask your questions

Q Mr. Ali, prior to the round ending, did you see anybody complain to Mr. Perez that Wepner had stepped on your foot?

A No.

Q While you were fighting did you believe that he stepped on your foot because you felt it or because you saw it or both?

A I felt it and saw it.

Q You saw it?

A Yes.

Q During the course of a fight is it your custom to watch the fighter more from the waist up, the other fighter, or more from the waist down?

B2 MR. SHARFMAN: Objection, your Honor.

THE COURT: Let's talk about this fight.

Q During the Wepner fight.

A First I want to say this -- I just don't want to be a -- I noticed we were talking about whether I saw a foul. All of a sudden we have stopped talking about that. Eight --

THE COURT: All right, Mr. Ali.

Q We'll get to that.

A Okay.

Q During the fight with Wepner, were you watching Wepner walk more from the waist up or more from the waist down?

A I look at his whole body, like I see you. I see your whole body. I see your feet and your arms, your head. I can't help but see all of you.

Q Where do you concentrate?

A Just looking right at you straight. I'm looking at you now and I see all of you plainly, the face and eyes.

Q As you are looking at me without changing your eyes, what color shoes am I wearing?

A Black.

Q Good.

Now, it is your testimony, as I understand it, that you don't concentrate on the top half of the fighter more than the bottom.

A I know he stepped on my foot.

Q I now he stepped on your foot. Isn't it a fact that you felt it but you didn't see it?

A Yes, I saw it. As I'm going down I could see his leg in front of me.

Q Was there any reason that you didn't complain to Mr. Perez that he had stepped on your foot?

A It wouldn't do no good.

Q When you say --

A Because after the fight he still -- I guess he'll admit it now, that it happened, but for a while he said it was a clear knockdown. I tripped on my foot. He wouldn't admit right there, as it happened after the pictures.

Q What did you say about it?

A I didn't say nothing about it. He won't admit it now.

Q How many rabbit punches?

A There were no protests from --

MR. SULLIVAN: I ask your Honor to instruct the witness to --

THE COURT: He said to you that those without protest are the number which he will give you now.

MR. SULLIVAN: I had asked him how many.

A One, two, three, four, five, six, seven, eight, nine kidney punches. One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen kidney punches.

Q Did you hit Wepner with any rabbit punches the entire round?

A No. I didn't note from the -- I'm sure I didn't.

Q If you remember, I had asked you to look for both.

A I did. I did.

Q When he was hitting you with the rabbit punches,

were there any of those times that he was hitting you with the rabbit punches that you were holding his head down?

MR. SHARFMAN: Objection.

A I think I told you that the referee is no longer around and whatever I do -- as far as holding him, I didn't hurt him. What I did was keep myself protected.

How do you make me guilty for not getting hurt, when he hurt?

MR. SULLIVAN: I ask that the answer be stricken.

THE COURT: Strike out the answer.

Q My question, Mr. Ali, is at any of those times that you were rabbit punching or that Wepner was rabbit punching, were you at any of those times holding down Wepner's head?

A No. I can't -- I see the film. I can't tell. Whatever I did, sir, was to keep him from hurting me. My neck was hurting by then.

MR. SULLIVAN: I ask that the last part of the answer be stricken.

THE COURT: Motion denied.

MR. SULLIVAN: Mr. Ali, you can stay there for a second.

(Pause)

MR. SULLIVAN: Plaintiff's Exhibit 2, your

Honor. Start with Round 4, the Ali-Frazier fight.

MR. SHARFMAN: Your Honor, I object.

THE COURT: Have we had Plaintiff's Exhibit 2, Round 4, with this witness yet?

MR. SULLIVAN: Only Round 2, your Honor, the round that was stopped earlier.

THE COURT: You may proceed.

I have already ruled that we will take the proof and if I find that it is inappropriate we'll strike it out, but I can't anticipate. I haven't seen these pictures myself, so I can't guess what is on them.

MR.SULLIVAN: I'll start with Round 6, your Honor.

Q I'm going to show you Round 6, Mr. Ali, and I'm going to ask you to look --

THE COURT: Round 6 of what?

Q -- of the Ali-Frazier fight, Plaintiff's Exhibit 2 in Evidence, and I'm going to ask you to look for fouls by either fighter and specifically I'm going to ask you to see whether or not you were holding Frazier.

MR. SHARFMAN: Objection.

THE COURT: The objection to that will be sustained. That is not part of this case. This case has to do with what occurred at the Wepner fight and in Round 2 of

the Frazier fight, by definition in the plaintiff's own pleadings.

We are not going into a lot of collaterial matters on the direct case of the plaintiff. This is not going to be a forum to go over the life-style of anybody other than in connection with the issues in this case.

MR. SULLIVAN: At this time, sir, it is only my intention to show three rounds.

THE COURT: It is my intention to exclude those. As I say, it is irrelevant, since you have told me that it hasn't to do with the 2nd round or the Wepner fight, so that it is not an issue in this case. It is irrelevant. It hasn't to do with the Wepner case nor has it to do with the 2nd round where the fight was curtailed from before the bell and the light, and that is what this case is about as phrased in your complaint.

MR.SULLIVAN: May I have a moment?

THE COURT: If there is any paragraph of your complaint that you think is different from what I have suggested, tell me the paragraph.

MR. SULLIVAN: Yes, your Honor.

(Pause)

THE COURT: On the basis of Court Exhibit 15, I'm not going to pass upon whether it has any validity or

not, but we will take the proof and if it turns out to be inappropriate I will instruct the jury to disregard it.

Counsel for the defendants may see it and any objection to this procedure is overruled.

xx (Court Exhibit 15 marked for Identification.)

(Videotape played.)

(Continued on next page)

Q Mr. Ali, did Frazier throw any rabbit punches in that round?

A I wasn't thinking about it. I didn't look for it.

Q Do you remember seeing him throw any at all?

A I don't think I --

THE COURT: Unless you are offering this evidence in connection with the subject of the last Court's Exhibit, and now you are going into a different matter unrelated to the subject of Court's Exhibit 15.

MR. SHARFMAN: I object.

THE COURT: Objection is sustained. There being no show of relevancy.

Q Did you do any holding in that round, Mr. Ali?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Same ruling.

Q Did Mr. Perez warn you for any holding in that round?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

Q The question is did Mr. Perez warn you of any holding in that round?

A No, sir.

Q Did you do any holding in that round?

A Clinching. To keep his head from butting.

If you look at it real close he is right around here and I have to keep him from butting me. I clinch him to protect myself from getting butted. Frazier does a lot of head butting, and I am not going to let anybody butt me in my face and bust my face.

Q Two more rounds, rounds 7 and 8?

A What do you want me to look for?

Q I would like you to look to see if Mr. Perez warned you for any holding, and I would like you to look to see if you do any holding, and I would like -- if you do find any holding, I would like to see if it is with respect to Mr. Frazier butting, and whether or not Mr. Frazier presented any rabbit or kidney punches.

(Video tape played.)

Q Mr. Ali, did you see any rabbit punches by Frazier?

A No.

MR. SHARFMAN: Objection, your Honor.

THE COURT: Objection sustained, strike out the answer.

Q Did Mr. Perez warn you for holding?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

A No.

Q Did you do any holding in that round?

A No, sir. I would like to say this if I can --

THE COURT: No.

Q One more round, round 8.

In this round, Mr. Ali, just look for two things, does Mr.Perez warn you for holding, do you do any holding?

(Video tape played.)

MR. SULLIVAN: We will stop there. Your Honor, I think there was a few seconds left but it is on the next tape.

Q Mr. Ali, in the part of that round that we just watched, didn't Mr.Perez warn you for holding?

A I don't know what he was saying. He broke us up. He said something -- it could have been either one of us. He didn't look directly at me. He just broke us up and said something. I fight like this in all my fights. I am clinching, and I am not holding.

Q Did you do any holding in that round?

A I don't call it holding. I call it clichina. You call it holding.

Q Mr. Ali, in the second round of the Frazier fight, when you said on the Cosell show the things you said on the Cosell show about the Wepner fight and when you said the things you said at the press conference,

did you believe at that time, sir, that you had Frazier about to be knocked out in the second round?

A Yes, sir.

Q Did you believe that the reason you had him about to be knocked out is because you had hit him very hard?

A A hard right hand. The film showed it.

When I hit him he wobbled, he almost fell. The film shows it.

Q Did you believe at that time, sir, that the timekeeper had not rung the bell early?

A I know I didn't hear the bell.

Q It was your belief, in other words, that when Mr. Perez stopped the fight the first time the timekeeper had not rung the bell?

A Whoever rings the bell. I don't know who rings it.

Q Who ever rings the bell.

A The bell didn't ring. I know it didn't. The ring can be heard through Madison Square Garden. I didn't hear nothing.

Q At the time you made these statements in the press conference and at the interview, it was your belief that -- as you said, you knew that the bell had not rung?

A Yes, sir.

Q Mr. Ali, you said yesterday, I believe, that --

withdrawn.

Do you still believe that Tony Perez had a bet on the Frazier fight?

MR. SHARFMAN: Objection.

THE COURT: We have had that several times during this direct examination of this witness. We are not going to keep a forum going here for duplication.

MR. SULLIVAN: Yes, your Honor.

Q Do you fell, sir, that anyone who gets paid by gangsters or bets on a fight that he is refereeing should still be entitled to referee fights after that?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

This is an argumentative approach to a subject that has been already plowed over.

MR. SULLIVAN: No further questions. Thank you.

THE COURT: Any cross examination at this time?

MR. SHARFMAN: Just one or two questions, your Honor.

THE COURT: Speak up so we can hear you.

MR. SHARFMAN: I am sorry. Just one or two questions, your Honor.

CROSS EXAMINATION

BY MR. SHARFMAN:

Q Mr. Ali, you testified on your examination by Mr. Sullivan that you had read an article in a newspaper. I show you a document that has been marked as Defendant Ali Exhibit M-16 for identication and ask you, sir, whether this is the article that you then referred to.

(Handing.)

A Yes, sir.

MR. SHARFMAN: Your Honor, I move for the introduction of that in evidence, please.

THE COURT: You mean you offer it in evidence?

MR. SHARFMAN: I offer it in evidence, sir, yes.

MR. SULLIVAN: Objection.

THE COURT: Will you state the grounds of your objection on a piece of paper to me, please, unless you wish to give me the legal grounds. You may state the argumentative grounds on a piece of paper.

Do you know what page of the transcript, Mr. Scharfman, this article was inquired into by the plaintiff's lawyer?

MR. SHARFMAN: Your Honor, I do not.

THE COURT: Was it yesterday?

MR. SHARFMAN: It was yesterday, sir.

MR. SULLIVAN: Your Honor, if it will save time, I remember my question.

If we could agree, I will write it out.

MR. SHARFMAN: I think Mr. Sullivan and I agree on what was the substance of the questions and the answers, your Honor.

THE COURT: I want you to put that on a piece of paper before it is mentioned to the jury, otherwise I would like to be led directly to the page of the transcript of yesterday, which I have before me.

MR. SHARFMAN: I am suggesting to Mr. Sullivan that we write it out for your Honor.

THE COURT: Why don't we mark this document for identification at the present time, and when you ascertain what it is that you are both talking about that can be considered as an offer in evidence, it needn't be gone into in detail at the present time.

Let's go forward.

BY MR. SHARFMAN:

Q Mr. Ali, you testified at some length in your direct examination about rabbit punches and kidney punches during the fight with Mr. Wepner in Cleveland, Ohio, the World Heavyweight Championship.

Did you sustain any injuries as a result of

the rabbit punches?

A Yes, sir.

Q What injuries, sir?

A I had two large, real painful lumps right on the back of my head.

Q At what point during the bout did you first start feeling pain in the back of your neck?

A When I started cuffling my hand, putting my hand -- a round or two before that, I don't remember. It was well into the fight. I would say it was around eight rounds.

Q After the fight, did you receive any medical treatment in respect of those two lumps in the back of your neck?

A Yes, sir.

Q What treatment was that, sir?

A Some pain pills. I took about two pain pills like every four hours or so.

MR. SULLIVAN: Your Honor, may I object?

THE COURT: To what?

MR. SULLIVAN: I state that that's not proper on this part of the case at this time.

THE COURT: I think it is distinctly proper. You raised the question about the rabbit punching, and

on cross examination of that there is no reason why the effect of the rabbit punching and the effect on this witness' beliefs shouldn't be brought out.

Q Mr. Ali, for how long did you experience this pain in the back of your neck?

A I can't really recall, but not much less than more than a week, about six or seven days.

Q Did these lumps in the back of your neck interfere with the movement, at all, of your head or neck?

A It was kind of hard to turn around. I had to turn my whole body. My neck muscles were sore.

Q Did you feel that during the fight itself, sir, did you experience that pain?

A Yes, sir. Maybe about the last five rounds it hurt. It was kind of hard to throw punches.

Q You also testified, Mr. Ali, about kidney punches, a great number of kidney punches by Mr. Wepner directed to your kidneys?

A Yes, sir.

Q Did you experience any physical injury as a result of those kidney punches, sir?

A Yes, sir.

Q What happened?

A The urine was with blood, a bright reddish urine.

It happened about 1:00 or 2:00 that morning after the fight. I went to the restroom.

Q Did you see bright red blood --

THE COURT: Read the last answer.

MR. SHARFMAN: I will withdraw the question.

Q Did you speak to a doctor?

A Yes, sir.

Q Did you experience any pain in the kidney areas, Mr. Ali?

A Yes, sir.

Q Would you describe that pain for us, please?

A It is kind of difficult, just sore sides, just a painful feeling from punches. It was sore.

Q How long did that soreness,that pain, continue, sir?

A I still have it. It happens after each fight. If I am not hit -- just body punches, it went away. It aint as tender, like. Anything happens around here (indicating) comes up easy. That particular pain must have stayed with me about a month, five weeks.

Q Did you ever have that pain prior to the Wepner fight?

A No, sir.

Q Let me make sure I understand your testimony, Mr. Ali.

Subsequent, that is after the Ali-Wepner fight, you have had fights in which you have had pains back here, is that because you were hit by kidney punches in those fights?

A No, body punches, chest, which are legal punches, body punches, chest punches.

Q As a result of those punches, since the Wepner fight you have experienced pain in your kidney area also?

A Just vaguely. I have been shaken.

Q Did you see a physician concerning your kidney punches, your pains in the kidney and the red blood in the urine?

A Yes, a well-known fight doctor, Pachecco. I told him and showed him the next morning, and he had to go back to Miami, so he put me on to another doctor in Chicago, Dr. Charles Williams.

Q Did you speak to Dr. Williams?

A I showed him, yes, and he gave me some more pills.

Q How long did the red blood in your urine continue to show itself after the Wepner fight?

A Almost a -- I don't know exactly. To be safe, I would say not over or not less than 10 days.

MR. SHARFMAN: Thank you, Mr. Ali.

If I might have a moment, your Honor, to confer with Mr. Sullivan regarding the testimony.

(Recess.)

MR. SHARFMAN: It is this morning's testimony. We don't have the transcript for it.

THE COURT: Is this Mr. Sullivan's note?

MR. SULLIVAN: Yes, sir.

THE COURT: There is no objection to my calling this to the attention of the jury as a statement on your part, is there?

MR. SULLIVAN: No, sir, I don't object.

THE COURT: Mr. Sullivan says I asked Ali if he had read the article, referring to Defendants' Exhibit M-16, before he made statements on the Cosell show. he said yes.

What is your next point?

MR. SHARFMAN: I would like to admit M-16 in evidence, your Honor. I would like to offer it in evidence.

MR. SULLIVAN: I object on the grounds of hearsay and incompetence, your Honor.

THE COURT: The question is whether you opened the door.

MR. SULLIVAN: Yes, your Honor, I know.

THE COURT: We will leave it marked for

identification. We will have time during the trial when we will consider it again.

No further questions of this witness?

MR. SHARFMAN: I have no further questions.

MR. SULLIVAN: Your Honor, may I write something down?

THE COURT: Have you any redirect?

MR. SULLIVAN: Oh, yes, your Honor.

THE COURT: Go right ahead.

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Do you still have pain in the kidney?

A Just a little bit after the Norton fight.

Q Did you have i t before the Norton fight?

A No, sir.

Q Are you claiming that the pain in the kidney you had after the Norton fight is a result of Mr. Wepner or Mr. Norton?

A Mr. Wepner, sir.

Q But you didn't have it before the Norton fight?

A Not until I got in the fight and took a few punches in the stomach.

Q It is pain, is that correct?

Is there any other problem? Any other problem

other than pain that you had from the Wepner fight?

A No, sir.

Q All right.

Do you remember this question and this answer at the EBT:

"Q Do you have any trouble with your body at the present time?

"A No, but I have got to go to the bathroom every 15 minutes. I have been going five times a day. I think it hurt me for life."

Do you remember that question and that answer?

A Yes, sir.

Q As far as pain, do you have any pain or not?

MR. SHARFMAN: Objection, your Honor.

THE COURT: He may answer.

A Only, sir, when I am in a fight it comes back easier.

Q That is all caused from Mr. Wepner?

A I imagine. I have never had it before that.

Q Do you know? Do you know if it is all caused from Mr. Wepner?

A I don't know, but I have never had it before, until I had the Wepner fight.

Q Do you still experience the problem of going

to the bathroom frequently?

A Yes, sir.

Q Mr. Ali, if I tell you that yesterday morning you came in this room at 10:00 o'clock and sat here and didn't leave the room until 11:30, at which time you went to the men's room, and that you came back and you stayed until 12:30, the luncheon break, and then from 2:00 until ten to 5:00 you never left, and then this morning you were on the stand from 10:00 o'clock until approximately 12:30 without leaving, and then this afternoon you have been on the stand for over an hour?

A I was hurting, too.

I begged my lawyer twice to leave, but he wouldn't let me the other day.

Q Did you ask him to ask for a recess?

A No. I have too much respect for the Court.

Q What about when I asked for a recess this morning, I had some problems, and it was denied.

THE COURT: We are not going to get into all of these niceties.

Go ahead with something else.

Q Do you still say, sir, that you have to go to the bathroom every 15 minutes?

A Right this minute, sir.

MR. SULLIVAN: I ask for a recess, your Honor.

THE COURT: Are you asking on your own behalf?

MR. SULLIVAN: No, sir, for Mr. Ali.

THE COURT: Then go ahead and ask your questions.

THE WITNESS: I would like to keep going, sir.

Q Isn't it a fact that prior to the Wepner fight your sparring partners hit you repeatedly with kidney punches and rabbit punches to prepare for Wepner?

MR. SHARFMAN: Objection.

A I told you now.

Q Isn't it a fact that over the years you had been repeatedly hit with kidney punches?

MR. SHARFMAN: Objection.

A No.

Q Isn't it a fact that the doctor who you went to told you that your kidney problems are probably from over the years as a boxer, isn't that a fact?

A Who told you that? What doctor?

Q Dr. Pachecco, the one you mentioned before.

A He never told me.

Q He never said that?

A I know that doctor.

Q Do you remember this question and this answer at

that deposition, Mr. Ali, on page 255:

"Q When did Dr. Pachecco say that the blows you received from the Wepner fight affected you for life?

"A Roughly about a month ago, just by telephone. I asked him why do I have to go to the toilet every 15 minutes. I can't hold my liquids.

"He said your kidneys are probably weak.

"I said from what?

"He said probably from rabbit punches, kidney punches. I'm sorry, not rabbit punches, kidney punches.

"Q Did he say that the kidney punches were from the Wepner fight?

"A No, I said could have been, it could have been over the years."

Do you remember those questions and those answers?

A No, sir.

Q You don't remember?

A No, sir. I know, sir, I have never taken --

Q Just answer my question.

A No, I don't remember that, sir.

Q The pains that you had after the Wepner fight, isn't it a fact that six weeks later you fought for the Heavyweight Championship against Ron Lyle?

A I don't know if it was six weeks or not. I don't

know how long it was. I don't even know if Lyle was the next contender. I can't recall.

Q I show you this list, Mr. Ali. Does this refresh your recollection as to how soon after --

A If it was, it was, I don't remember.

Q If the fight was six weeks later, when did you start to train for the Lyle fight?

A About two weeks before.

Q How many times have you defended your heavyweight Championship since the Wepner fight?

A I don't recall.

Q Who have you fought?

MR. SHARFMAN: Objection, your Honor.

THE COURT: We will take that.

A Lyle, I fought Tony Inoki, the wrestler in Japan, Richard Dunn, European Champion in Germany.

(Mr. Sullivan hands witness book entitled "The Greatest.")

MR. SHARFMAN: Your Honor, I object to the use of this document.

MR. SULLIVAN: It is just to refresh his recollection, your Honor.

THE COURT: You can give anything the witness thinks will refresh his recollection. I think it would

be a matter of stipulation --

MR. SHARFMAN: I will stipulate to whatever the name and the dates are.

A You tell me and I will --

Q Joe Bugner, correct?

A Since Wepner?

Yes.

Q And Joe Frazier in Manila, correct?

A Right.

Q Now, Mr. Ali, isn't it a fact that Lyle and Frazier and Norton, they all hit harder than Wepner, don't they?

MR. SHARFMAN: Objection.

THE COURT: Sustained.

Q Did you receive any damaging blows from them in your kidneys?

A No.

MR.SHARFMAN: Objection.

A They didn't kidney punch.

Q Not at all, never?

A Not as I recall. The referee would have stopped it.

Q Did you get kicked in the kidney at all in the Japanese fight?

A Get kicked in the kidney?

Q -- the wrestler that was on the floor all the time?

A No.

Q Mr. Ali, you said, I believe, to Mr. Scharman that you saw Dr. Pachecco and he examined you, is that correct?

A No, he saw the urine. He didn't examine me.

Q When he was there examining you, that's when he told you those things, correct?

MR. SHARFMAN: Objection.

THE COURT: He just got through telling you he wasn't examined and that he made a laboratory examination. Not a physical examination, is that what you said?

THE WITNESS: Yes.

Q But he was right there, correct.

He was there, whether he examined you or not, he saw it.

A There where?

Q Wherever you were at the time when he saw it. If he saw it, he was there, correct?

A Yes, sir.

Q Didn't you testify at the EBT that you called him on the telephone to ask him why am I having problems,

and he told you over the telephone what it probably was.

MR. SHARFMAN: Objection, your Honor. That was a telephone call weeks before the --

THE COURT: Please.

A That was the morning after the fight, he saw the urine.

Q The morning after the fight?

A The call was later.

Perez

Q But the doctor, as I understand it, did not examine you; is that correct?

Tk3 B1 p.m.

A Yes, sir, not to check.

Q He did not examine you?

A No physical examination, no, sir.

MR.SULLIVAN: No further questions, thank you.

THE COURT: Thank you very much, you may step down.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: We'll take a recess now.

(In the robing room.)

THE COURT: Mr. Richard Barnes of the office of Townley, Updyke, Carter & Rodgers has handed me a letter in connection with the subpoena served on a Mr. Dick Young, who is supposed to be connected with the Daily and Sunday News, and this letter says that the witness seeks to quash the subpoena because the writer, Mr. Barnes, views with alarm yet another attempt by litigants to compel reporters to testify in situations violative of their First Amendment rights.

And then perhaps as added fuel, Mr. Barnes says:

"This attempt is particularly agregious in view of Mr. Young's involvement in American League play-offs and the impending World Series."

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Parenthetically, I didn't know that he was involved with those teams.

MR. BARNES: That was prepared very hurriedly.

THE COURT: I think I understand what he is saying. He is saying that this is a money-making opportunity for him, apparently, and he wants out.

Now, turning to the application which I declined to sign -- I was presented with an order to show cause in form to be signed by me -- why the subpoena of Mr. Young should not be quashed, and I had a very learned memorandum on reporters' rights and duties and privileges, Mr. Young has been brought to court and the question now is whether this calls for any resolution by me, whether the party who subpoenaed Mr. Young, as is suggested by this memorandum, apart from the supposed First Amendment rights, can dispense with Mr. Young in view of his involvement in the current coverage of the major league play-offs and the World Series, and the fact that he must turn out a column that appears daily in the Daily and Sunday News.

MR. SULLIVAN: I understand. I have a couple of suggestions. Number one, may I tell your Honor initially that Mr. Barnes and I have spoken by telephone almost every night to try and arrange it around Mr. Young's schedule.

Number two, my understanding is that the last

game of the play-offs is tonight.

THE COURT: No matter who wins?

MR. SULLIVAN: It is two apiece, and it is the best of five, so that perhaps tomorrow morning might be more convenient for Mr. Young, and I anticipate, although I seem to have trouble for the first time rounding up witnesses, but I do have one, I know, out here. Perhaps tomorrow morning is better.

The second thing I wish to say is that --

THE COURT: First of all, is tomorrow more convenient than today?

MR. BARNES: It is not. He is leaving on an 8:30 plane for Cincinnati in preparation for the World Series. We had been told by Mr. Sullivan that he required Mr.Young here at 2:00 o'clock today.

MR. SULLIVAN: I will put him on. I won't be more than 15 minutes tops.

THE COURT: All right, that raises the next question. Is there anything to this business about a writer of Mr. Young's stature being exempt from testifying to matters that do not entrench on his First Amendment rights as a member of the Fourth Estate?

MR. SULLIVAN: I don't even know the main issue, but I'm not going to ask this man what his sources are.

I will say that at the outset.

THE COURT: What is the general subject of Mr. Young's appearance here? Is it to be on a factual aspect as to his personal, factual knowledge, or is it on some other area?

MR. SULLIVAN: The first area are the same questions I asked Mr. Recht about reputation in the community, and the second area is what things, if any, Muhammed Ali said directly to Mr. Dick Young. That is it.

MR. BARNES: At what point and where, concerning what subject matter?

MR. SULLIVAN: At --

MR. BARNES: I will tell you one thing that troubles me.

THE COURT: Just a minute. You can't ask a question and then interrupt the answer.

MR. BARNES: All right.

MR. SULLIVAN: At any time from the Frazier fight, a fight too, concerning anything in the Frazier fight, and then at any time from two days before the Wepner fight until two days after the Cosell interview.

THE COURT: You don't claim, do you, Mr. Barnes, that what Mr. Ali said to Mr. Young is a priviledged source?

MR. BARNES: If it wasn't published, yes, your

Honor, I certainly would

The reason I interrupted the answer to my own question is that I'm just not sure -- and I say this without disrespect -- I don't impute any evil motive to you --

MR. SULLIVAN: I understand.

MR. BARNES: -- is that I cannot rely on what Mr. Sullivan says he is going to do in court.

THE COURT: I can because I can control it.

MR. BARNES: That is true, but I would like to hear it now so that, you know, what he represents he is going to do.

THE COURT: So what you are asking me to do is so that Mr. Young gets a preview of the questions,

MR. BARNES: No, no, so that you do, because every time I have spoken to Mr. Sullivan he has told us a different thing as to what he is going to ask Mr. Young.

THE COURT: A lawyer who prepares a case who doesn't keep improving and improvising his procedure is not a virtuoso. So, if he has moved instead of remaining static, I would compliment him.

MR. BARNES: I understand that.

MR. SULLIVAN: The only question --

THE COURT: The only question here is this: I don't know to what extent this reporter privilege business

gets into it and how far the First Amendment gets into it, and just how much of this would be applicable if the World Series and tonight's play-off weren't involved, but let's see if we can't arrive at a statesman-like accommodation of the whole thing without your transmitting, directly or indirectly, to the proposed witness who will be next on the stand, the line of inquiry and the manner in which you ask it.

B2 Why don't you tell me and Mr. Barnes, who will be under instructions to keep it confidential from the witness until the witness takes the stand, what your inquiries are, and then maybe we'll be able to placate all concerns.

MR. BARNES: I don't think Mr. Sullivan has any reluctance in telling us now.

MR. SULLIVAN: I stated just now what my inquiries are.

THE COURT: Go down the list, 1, 2, 3, 4, 5, and then I will attempt to control the fight.

MR. SULLIVAN: Your Honor, may I just make one short statement that I think is necessary for the record?

What Mr. Barnes says is not true. I specifically told him on the telephone last night --

THE COURT: You don't have to apologize to Mr. Barnes or persuade me as to what occurred. I am saying to you that I respect your position as a lawyer sufficiently

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to believe that you would not be doing anything improper and if in the course of preparing your case your lines kept shifting, I would compliment you for it, instead of having you come in here with a stodgy, frozen position.

You have a client to represent. It is your obligation to represent him to the best of your ability and if you can improve right up to the moment that the bell sounds, you just go right ahead and prove it.

Let's get off the personalities.

MR. SHARFMAN: May I inquire at this point how much longer in time you believe your case will take?

THE COURT: We have Mr. Young out there. We are going to have Mr. Young on and off so he can take his plane.

MR. SULLIVAN: I'm going to ask him maybe three questions on the reputation of Tony Perez in the community, now that I have learned how to ask the question.

The second thing I'm going to ask is what things, if any, Muhammed Ali said to Dick Young about Tony Perez. That is it.

MR. SHARFMAN: There is no issue in this case, your Honor, regarding any statements to Dick Young, as I understand it.

THE COURT: Wouldn't it go to the question of

motive and intent and state of mind?

MR. SHARFMAN: It depends on the time of the statement.

THE COURT: The time has been closely limited.

MR. SULLIVAN: I specified my time.

THE COURT: It has been limited to the area approximating the Frazier fight and the area approximating the Wepner fight.

Isn't that right?

MR. SULLIVAN: Yes, your Honor.

MR. BARNES: You are limiting yourself to things Ali said to Young which Young published in the newspaper?

MR. SULLIVAN: No, no.

One other thing that someone might call a vairation -- not only things said directly to Mr. Young, but if Mr.Young was standing in the press conference and he heard Mr. Ali say something to the 200 reporters, I would also include that as something being said to Mr. Young.

MR. BARNES: Your Honor, I'm sorry I made reference in my letter and the brief to the World Series, because I have the feeling that perhaps you and maybe others think that the only reason we are here is to let the News put out a better newspaper tomorrow and the next few days as to coverage of the World Series.

We are talking about very serious First Amendment implications here. We are talking about a reporter now being asked to testify as to things that someone said to him in the course of that reporter's investigation; that reporter's, rather, covering or doing his reportorial duty.

THE COURT: Are you claiming that what Ali said publicly was confidential?

MR. BARNES: What Ali said publicly?

THE COURT: Yes.

MR. BARNES: No. What --

THE COURT: Ali is not claiming that the things that he told Young privately were confidential. What right have you got to claim confidence?

MR. BARNES: The reporter has the right.

THE COURT: No. I think that is carrying the thing too far.

MR. BARNES: The cases say there is no question about it.

THE COURT: There is no question about it, but you'll have to prove that in the Supreme Court of the United States.

MR. SHARFMAN: Mr. Ali would also claim that privilege, if that is necessary.

MR. BARNES: To the extent of what Mr. Young

said publicly, that is on tape. Whatever Young said --

THE COURT: I will have it produced, if he said it publicly, and the man was there. He is an auditor of the thing. There is no reason why he can't suspend his World Series duties for the moment.

MR. BARNES: That is exactly what the Supreme Court said in the case --

THE COURT: What objection has Ali to the things that he said about Tony Perez to Mr. Smith?

MR. SHARFMAN: To the extent that he was speaking -- I don't know that he said anything. I don't know that he has said anything to Mr. Young, but to the extent that he spoke in private with Mr. Young, and it isn't in a column, I would say he was speaking off the record and did not expect it to be attributed to him.

THE COURT: Why doesn't it show his motivation and state of mind in respect of his conduct towards Perez?

MR. SHARFMAN: It also seems to me, your Honor, on that issue that we are here regarding statements made on a program, an ABC program.

THE COURT: No, you are here to find out whether the statements that were made were malicious or recklessly indifferent to his knowledge of the truth, and in that connection, it seems to me that this is far remote from this

assault that the newspaper writers have made on giving evidence. There is no question here as there has been in the other cases of confidential sources.

Up to now, as I understand, in the decisions that have been made by any Court, no reporter has been excused from testifying on matters unrelated to confidential sources. Nobody has been given any protection where seeking out the news is not involved. This is not a question of seeking out the news. It is the source relationships that have been dealt with heretofore.

MR. BARNES: Quite to the contrary, there are a number of cases.

THE COURT: Just give me one.

MR. BARNES: I think if you will look at pages 7, 8 and 9 of our brief --

THE COURT: Just tell me which case you are talking about.

B3 MR. BARNES: The McCord case, Democratic National Committee vs. McCord, a federal court case, and there are a number of state cases where attempts were made to subpoena the notes and drafts of articles prepared by reporters, and the Court said --

THE COURT: Only because the problem there was confidential sources.

MR. BARNES: I don't believe so, your Honor. The Courts --

THE COURT: The deep throat business --

MR. BARNES: That was not involved in it at all. Wha was involved there was the Courts' attempt to protect the writing and the editing and news gathering processes of the reporters.

THE COURT: I don't believe that there is any privilege that can be asserted properly against the disclosure of the limited matters referred to herein. If Mr. Young intends to claim privilege, I'm going to have him paraded before the jury and do that. He will have his opportunity to do it in the robing room under an instruction and direction to testify which he can disregard if he chooses at such peril as the law allows.

You make up your mind what you want to do. It seems to me that the areas of examination here are so closely circumscribed that there is no legitimate basis for a refusal. Nobody is asking him anything about his writings or how he construed them or is cross-examining him on his writings. He is not being asked for any of his sources. He is being asked for admissions against interest, if any, and I don't know that there are any, and nobody has said that there are, made by a party to this lawsuit.

Insofar as the reputation in the community is concerned, it seems to me that with the plethora of character witnesses on that subject that I will rule as a matter of discretion that he need not be questioned in that area because there are sufficient others who have been called, according to the information that I have received in the briefs of the plaintiff, who can attest, if indeed there is attestation on that subject, and the discretion of the Court to limit character evidence and repetitious witnesses on that subject I think is well regarded.

The only area that I will permit, under the circumstances, will be any admissions against interest by Mr. Ali about Tony Perez in the two circumscribed periods announced by the plaintiff's attorney.

MR. BARNES: I'm going to suggest we ask Mr. Young whether he even had any conversations with Mr. Ali. Your Honor put your finger on a very sensitive thing. You said there had been no cross-examination about Mr. Young's confidential sources.

THE COURT: Mr. Young is not a party on the trial.

MR. BARNES: But Mr. Sullivan is going to ask Mr. Young --

THE COURT: You let Mr. Sullivan talk for himself.

You go out and talk to Mr. Young and find out what he is going to do about admissions, if any.

MR. SULLIVAN: Could I have just two seconds to talk to Mr. Barnes, your Honor?

MR. ELDRIDGE: May I assume that such testimony would not be produced against ABC or ABC Sports?

THE COURT: I have no idea what the testimony is going to be. If it doesn't apply to ABC, it won't. The jury has been instructed at least twice in vigorous terms that the testimony only applies against those to whom it applies.

(Recess)

(In open court - jury present.)

THE COURT: Next witness.

MR. SULLIVAN: Dick Young.

THE COURT: Mr. Young.

R I C H A R D Y O U N G, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Young, what is your occupation?

A I'm Sports Editor of the New York Daily News.

Q Have you covered heavyweight professional fights?

A Yes, sir.

Q For how many years have you covered those fights, approximately?

A Well, very consistently for the last five years or so, I would say.

Q Mr. Young, do you know who Tony Perez is?

A Yes, I do.

Q What is Mr. Perez' reputation in the community as a referee?

A It is considered good.

MR.SULLIVAN: No further questions.

THE COURT: Thank you very much, Mr. Young, you are excused.

MR. SHARFMAN: Thank you, Mr. Young.

(Witness excused.)

THE COURT: Next witness.

MR.SULLIVAN: Mr. Philip Taubman.

P H I L I P T A U B M A N, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Taubman, by whom are you employed, sir?

A Random House PUblishing Corporation.

Q In what capacity?

A I'm counsel for the corporation.

Q As counsel, for how long have you been with Random House?

A Two years.

Q Has that been two years as counsel?

A I was employed as an attorney until May of 1976. Then I was promoted to counsel.

Q As counsel with Random House, are you familiar with the contracts and forms of contracts that are signed to write books for Random House?

MR. SHARFMAN: Objection, your Honor.

MR. ELDRIDGE: Objection.

THE COURT: That is a preliminary question. You may answer.

A Some of the contracts.

Q What does Random House do?

A Their principal product is publishing books.

Q Publishing books?

A That is correct.

Q If it is decided that a book is going to be published is a contract drawn up to cover the publishing of that book?

A A contract is drawn up before the book is

published.

Q Who are the parties to that contract?

MR. SHARFMAN: Objection.

THE COURT: Any contract or a particular contract?

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Q Without naming their positions with respect to the book, who are the parties?

A The parties are the publisher and the author.

Q The publisher and the author?

A That is correct.

Q Now, sir, that document that you have, is that a record that is kept in the ordinary course of the business of Random House?

MR. SHARFMAN: May I see the document or a copy of the document?

THE COURT: In due time, yes.

THE WITNESS: Could you repeat the question?

THE COURT: Is that a record kept in the ordinary course of business?

THE WITNESS: Yes, it is.

MR.SULLIVAN: I offer this contract in evidence, your Honor.

THE COURT: Show it to counsel.

(Pause)

MR. SHARFMAN: Objection, your Honor.

THE COURT: Let me see the document (handing).

THE COURT: So much of Exhibit 38 for identification as I have checked off, it is received in evidence, the balance of it is excluded.

The ruling is in the record.

MR. SULLIVAN: I would like to read it to the jury with the Court's permission.

THE COURT: Go ahead.

MR. SULLIVAN: "An agreement made this 9th day of December, 1969 between Random House, Inc. of 201 East 50th Street, New York, New York, referred to as the publisher, and Muhammed Ali, also known as Cassius M. Clay, Jr."

THE COURT: This is, I take it, that counsel for the defense realize that any ruling that the Court makes that happens to be erroneous need not be objected to in order to preserve your rights, so I am returning your respective memoranda to you.

MR. SHARFMAN: Thank you, your Honor.

MR. SULLIVAN: (Reading)
--" who are citizens of the United States and residents of Illinois referred to as the author and designated by the masculine-singular pronoun. The author grants to the publisher during the term of copyright,

including renewals and extensions thereof, A, exclusive right in the United Staes of America, the --"

THE COURT: Did we skip the names? The names are included up above. That's all included. Start again.

MR. SULLIVAN: "An agreement made this 9th dayof December 1969 between Random House, Inc. of 201 East 50th Street, New York referred to as the publisher, and Muhammed Ali, also known as Cassius M. Clay, Jr., Herbert Muhammed and Richard Durham, c/o Chauncey Eskridge, Esq. whose address is 123 West Madison Street, Chicago, Illinois who are citizens of the United States and residents of Illinois,(referred to as the author and designated by the masculine-singular pronoun)."

Your Honor, I can't tell if this is in or not. It is important.

THE COURT: Go straight through one II from the top down.

MR. SULLIVAN: " -- whereas the parties wish respectively to publish and have published a work (referred to as the work of non-fiction provisionally titled 'Autobiography of Muhammed Ali.'

"Now, therefore, they mutually agree as follows:

"1. The author grants to the publisher during the term of copyright, including renewals and extensions

thereof:

"A, Exclusive right in the United States of America, the Phillipine Republic, Canada and all other countries to i. Print, publish and sell the work in book form; ii. License publication of the work (in complete, condensed or abridged versions(by book clubs including subsidiaries of the publisher;

"4. The author warrants that he is the sole author of the work; that he is the sole owner of all the rights granted to the publisher; that he has not previously assigned, pledged or otherwise encumbered the same; that he has full power to enter into this agreement; that except for the material obtained pursuant to paragraph 3, the work is original, has not been published before and is not in the public domain, that it does not violate any right of privacy; that it is not libelous or obscene; that it does not infringe upon any statutory or common-law copyright; and that any recipe, formula or instruction contained in the work is not injurious to the user.

"No. 27, Author credit will be by 'By Muhammed Ali.' In a less prominent position a credit will also be carried as follows 'As Told To Richard Durham.'

"In witness whereof the parties have duly executed this agreement the day and year first above

written." Signed Donald Pace for the publisher Random House, a name I can't read, your Honor, which I don't think is important for Random House, and also signed "Muhammed Ali, Herbert Muhammed, Richard Durham."

MR. SHARFMAN: As authors.

MR. SULLIVAN: I will read it exactly, "Signed Muhammed Ali, the author, Herber Muhammed, Richard Durham."

Q That contract was drawn up before the book is published, is that correct?

A That is correct.

Q Before the book is put into its final stage to be published in book form, does Random House have any procedure whereby they make sure that all the terms of the contract are lived up to before the book is published?

MR. SHARFMAN: Objection.

MR. ELDRIDGE: Objection.

THE COURT: Sustained.

Are you trying to get at whether there is a proof copy submitted to the author?

Q Is there a proof copy submitted to the author?

A I don't know whether that happens in every case.

Q Do we know from the records you have brought today, sir, whether it happened in this case?

A I do not know that.

Q If you look through the records might it help you?

A I might be able to identify the document.

(Short recess.)

THE COURT: Read the question back.

MR. SULLIVAN: There is no question, your Honor.

Q Do you know, sir, if after looking at your records whether or not such a proof existed in this case?

A What do you mean by that?

THE COURT: A proof copy. Was there one submitted to the author?

A There is correspondence here to indicate that something was submitted to Mr. Durham, jacket proofs of the book, uncorrected bound galleys from the book, copy editors' queries and unmarked, uncorrected complete sets of the manuscript.

THE COURT: All submitted to Mr. Durham?

THE WITNESS: That is correct.

Q By the correspondence, sir, you mean it was mailed to him?

A It was mailed to Mr. Durham, that's right.

Q Has Muhammed Ali been paid royalties as a result of the book?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Sir, I show you Plaintiff's 9 for identification and ask youif this was the book that was published as a result of that contract?

A This is the book.

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

Q Your answer was what, sir?

A That's the book.

MR. SULLIVAN: No further questions.

THE COURT: Any cross examination?

MR. SHARFMAN: Your Honor, I would only like to read --

THE COURT: Please. Is there any cross examination?

MR. SHARFMAN: I have no cross examination of this witness.

THE COURT: You want to read something that was not read, is that what you are saying, from the exhibit?

MR. SHARFMAN: I want to read something that was read and to make it clear, sir.

THE COURT: To reread something that was read, is that what you are saying?

MR. SHARFMAN: Withdrawn, your Honor.

THE COURT: Thank you very much, Mr. Witness,

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you are excused.

(Witness excused.)

THE COURT: Any further witnesses?

MR. SULLIVAN: Just one second.

Your Honor, I have further witnesses who have been subpoenaed but are not present in court.

THE COURT: I am not concerned with that. This is only mid-afternoon. If you have no further witnesses, that means you have no further witnesses.

MR. SULLIVAN: May I say that one of the witnesses that I subpoenaed for this afternoon at 2:00 o'clock I understand was excused until tomorrow.

THE COURT: We will take him out of order as part of your case in view of the arrangement made for him.

Is there any other witness?

I will say that you may read into evidence the passages from Exhibit 9, the passage on page 397 that you have marked A to A aspart of plaintiff's direct case. If any other passage is to be offered, it should be pointed out to the Court, and before any passage is offered, it should be called to the attention of the defendants.

MR. SULLIVAN: Yes, your Honor.

MR. SHARFMAN: I, of course, object to the

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admission of this, your Honor.

THE COURT: That makes it simpler.

Your objection is overruled, and that gives you your legal right.

MR. SULLIVAN: On page 397:

"This may have saved Frazier from a knockout in the second round of that last fight.

"I had him groggy and weaving, but did not followup. Not only because the timekeeper rang the bell too soon, but because I was saving my hands. I wasn't sure I had hit him that hard."

I call Mr. Dundee to the stand.

A N G E L O D U N D E E called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Dundee, sir, what is your occupation?

A I am a boxing manager, trainer.

Q Sir, for the last seven years, seven or eight years, who has been your prime fighter?

MR. SHARFMAN: Objection.

THE COURT: I will allow it.

A Muhammed Ali.

Q You are his manager, sir?

A I am his trainer.

Q Who is his manager, sir?

A Herbert Muhammed.

Q For how long have you been in and around boxing?

A 28 years.

Q Do you know who Tony Perez is?

A Yes, I do.

Q What, sir, is his reputation as a referee in this community?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

Do you know his reputation?

THE WITNESS: A good referee.

Q Do you, sir, discuss -- withdrawn.

Did you discuss with Muhammed Ali his strategy before the fight, his strategy in the second Frazier fight?

A Well, discussing strategy like that is not the actual way I can explain it or tell you about it.

THE COURT: Did you or did you not discuss strategy isn't the way the question was put.

A I did not.

Q Did you know what his strategy was going to be in that fight?

A No.

Q Do you know if anyone else knew other than Muhammed Ali?

A No.

Q Did you discuss his strategy before the Wepner fight with Muhammed Ali?

A No.

Q Do you know if anyone else knew his strategy before the Wepner fight?

A I don't believe so. I am the trainer.

Q Did you not, sir, bring in -- withdrawn.

Did you not -- withdrawn.

While he is training for a fight, are you always with him?

A I am with Muhammed Ali about five weeks prior to each fight, once, two months in Africa.

Q So for the five weeks before each fight you are with Ali, is that correct?

A Correct.

Q For the five weeks before the Wepner fight, did Ali have his sparring partners practicing kidney punches to prepare him for the Wepner fight?

A No.

Q Did he have his sparring partners practice

rabbit punches to prepare him for the Wepner fight?

A No.

Q Were you at the Wepner fight, sir?

A Yes.

Q Were you in Mr. Ali's corner?

A Yes.

Q When does a referee for the first time rule that when a man hits the canvas it was a knockdown?

A When he goes down.

Q He makes that decision instantly, is that correct?

A Correct.

Q Did anyone complain to Mr. Perez that Mr. Wepner had stepped on Ali's foot prior to his first ruling it a knockdown?

A Yes.

Q Who did?

A I did.

Q Where were you?

A I went out and yelled at Perez, it was no knockdown, he stepped on his foot.

Q You went out into the ring?

A Yes.

Q Am I to understand you went out in the ring while that round was going on?

A No, wait. When you please talk to me, talk at me. When you talk away from me I can't hear you.

Q I'm sorry.

Did anyone tell Perez that Wepner had stepped on Ali's foot before the round ended?

A Yes, I yelled he had stepped on his foot.

Q You yelled from the corner?

A From the corner.

Q Was there a lot of noise that night at the fight?

A I imagine. There must have been a lot of noise, yes.

Q There certainly was a lot of noise, sir, when Mr. Ali hit the canvas.

A Yes.

Q Sir, isn't it a fact that you are supposed to be seated and silent throughout the entire fight?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

We are not discussing this man's conduct in the fight.

Q Did you, sir at any time try and convince Muhammed Ali to cancel the second Frazier fight because of difficulty he was having with his hands?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Was there a meeting before the Wepner fight between the seconds for Ali and the seconds for Wepner to discuss who was going to referee the fight?

A No. Not to my knowledge.

Q There was no meeting at all?

A No.

Q What about between the managers?

A No.

Q No meeting?

A No.

Q Do you know, sir, who, if anyone, was the first referee appointed to referee that fight?

MR. SHARFMAN: Objection.

Q -- the Wepner fight?

A Come again, I didn't get that. Excuse me.

Q Isn't it a fact that Pete Radamacher was the first man designated to -- isn't it a fact that Pete Radamacher was the first man designated to referee the Wepner fight?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

A No.

Q When for the first time did you know that Tony

Perez was going to referee the Wepner fight?

A I read it in the paper.

Q When?

A A day before the fight, two days before the fight.

Q Two days before the fight?

A Yes.

Q It was in the paper?

A Yes.

Q Did Muhammed Ali know that Tony Perez was going to be the referee?

A I don't believe so.

Q You didn't discuss that with him?

A No.

Q Do you know if anyone discussed that with him?

A No.

Q Did you see Tony Perez at the weigh-in?

A I don't remember.

Q Can you tell me what papers it was in two days before the fight that --

MR. SHARFMAN: Objection, your Honor.

Q -- that Mr. Perez was going to be the referee for this fight?

MR. SHARFMAN: Objection, your Honor, as to form,

mistaking prior testimony.

MR. SULLIVAN: He said it was in the papers.

I will withdraw the question.

Q Can you tell me what papers it appeared that Mr. Perez was going to be the referee of the Wepner fight a day or two before the fight?

A I really don't know. I don't remember. It must have been local papers.

THE COURT: Local meaning what, Cleveland, sir?

THE WITNESS: Yes.

Q Was Ali in Cleveland at the time?

A Yes.

Q Was Herbert Muhammed in Cleveland?

A I don't know if Herbert was there or not.

Q Do you know who Chuck Wepner's manager is?

A Al Braverman, to my knowledge.

Q Did you ever meet with Mr. Braverman before that fight?

A I used to see him in the gymnasium when I used to go check Wepner's workouts. I am friendly with Al Braverman. I know him maybe 28 years.

Q Do you know whether or not Muhammed Ali ever -- withdrawn.

Did anyone in Ali's camp, be it Ali, his managers

or his seconds, formally object to the appointment of Tony Perez as the referee of the Wepner fight?

A Not to my knowledge.

Q Did Muhammed Ali ever tell you that he had received an anonymous phone call the morning of the Frazier fight that the caller had the referee?

A Yes.

Q He told you that?

A Yes.

Q Did Muhammed Ali ever tell you that he believed the referee -- did Muhammed Ali ever tell you prior to the Wepner fight that he believed Tony Perez stopped that second round early on purpose?

A Yes.

Q Knowing this, sir, and knowing a day or two before that Tony Perez was about to referee the Wepner fight, were you concerned about the fact that Perez was going to be the referee?

A No.

Q Can you tell me why sir?

A I told you before that Perez was a good referee.

Q After the Frazier fight, the second Frazier fight, and after the Wepner fight -- withdrawn.

Right after the Wepner fight, did you hear Mr.

Ali's comments on the Wide World of Sports show about Wepner?

A I missed that.

Q You missed the television program?

Did anybody tell you what he had said after the Wepner fight?

A I heard about it, yes.

Q You knew, sir, that he had said that Mr. Perez had probably been paid by gangsters, did you not?

A I don't remember that.

Q You knew, sir, that he said he had a bet on Frazier, did you not?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Do you remember the signing of a contract in New York between Muhammed Ali and a man named Cooperman for a fight in Puerto Rico?

MR. SHARFMAN: Objection, your Honor.

A I don't have nothing to do with contracts. I don't remember, no.

Q Do you remember, sir, reading or hearing that Muhammed Ali had said that he would like Tony Perez to referee that fight in Puerto Rico?

MR. SHARFMAN: I object, your Honor.

A I don't remember.

Q Assume that there is evidence in this case that Mr. Ali has testified that he did say that he wanted Tony Perez to referee the fight in Puerto Rico. Assume that for a second. Assume further that Mr. Ali has testified that the fight in Puerto Rico was after the Frazier fight, the second Frazier fight, and after the Wepner fight. All right?

Does that make sense to you?

MR. SHARFMAN: Objection.

THE COURT: Sustained.

Q Did Ali ever tell you that he believed that Tony Perez was paid by gangsters?

MR. SHARFMAN: I object, your Honor.

THE COURT: You may answer.

A At what time?

Q Any time.

A Ali did tell me, yes, he thought that Tony Perez was paid by gangsters.

Q When?

A After the fight with Wepner.

Q Did he ever tell you that he believed that Perez had a bet on Frazier in the second Frazier fight?

A I don't remember.

Q When Mr. Ali trained for the Lyle, how long would he run for in the morning?

MR. SHARFMAN: I object, your Honor.

THE COURT: Sustained.

Q Did Mr. Ali ever tell you that he had trouble with his hands in the Frazier fight and he couldn't hit that hard?

MR.SHARFMAN: Objection.

A No.

Q Do you know if he had trouble with his hands in that fight?

A No, he had no trouble with his hands.

Q He had no trouble with his hands?

A No.

Q Did he have trouble with his hands before the fight, getting ready for the fight?

A Which fight?

Q The Frazier fight.

A No.

Q Did he visit a doctor, sir, up near the training camp for the hot wax treatment for his hands before that

second Frazier fight?

A Oh, yes, he had that hot wax treatment up in camp. I got a kick out of watching it.

Q Where did he apply the hot wax, what part of his body?

A On his hands.

Q And he visited a doctor for that, didn't he?

A No.

Q The doctor came to the camp?

A No, he had this hot wax and every time he would sit around, do nothing, he'd put his hands in it and they would turn white and he'd get a kick out of it.

Q And whose idea was the hot wax? It was prescribed by a doctor, wasn't it?

A No. Gene Kilroy, one of the guys in the entourage, used to have football players who used it, and it is soothing, so that is how it came about.

Q What was the reason for it?

MR.SHARFMAN: Objection, your Honor.

A To sooth.

Q To sooth his hands?

A Yes.

Q When you say sooth, you told us before he wasn't having a problem with his hands.

A None.

THE COURT: Don't start getting into an argument again. Don't repeat the testimony.

What is the next question?

Q Was he having trouble with his hands in preparing for that fight?

A No.

Q Did you ever read this book?

A No.

Q You never read any book?

A No. Forgive me. I'm a bad reader. I go to sleep reading the sports page, really.

Q Have you ever spoken to Mr. Herbert Muhammed?

A Yes.

MR.SHARFMAN: Objection.

Q Did he ver tell you that he read the book?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Do you know anybody, sir, who ever read this book?

MR. SHARFMAN: Objection.

THE COURT: Sustained.

MR. SULLIVAN: If I may have just a second.

(Pause)

Q Who is, if you know, Lou Beltrami?

MR. SHARFMAN: Objection.

THE COURT: Overruled.

Who is he?

THE WITNESS: Yes.

Q Who is he?

A I met him in Deer Lake.

Q Do you know if Mr. Beltrami knows Mr. Ali?

A Yes.

Q Who is Dr. Peter Greco?

A I don't know.

MR. SULLIVAN: I must write a note.

(Pause)

THE COURT: Court Exhibit 16 has been handed up.

Well, are you talking about the period since March 1975?

MR. SULLIVAN: Yes, your Honor, that is the question I had asked.

THE COURT: Go ahead.

Q How long did Muhammed Ali run in the morning to train for the fight with Lyle, I believe, the first fight after Wepner?

A It varies from day to day.

Q On the average, while training for Lyle.

A He don't run distance. He runs time.

Q How much time?

A Forty-five minutes, an hour. He mostly -- forgive me. I'll give you a little better explanation.

Q Fine.

A He runs most of the time by himself.

Q How many weeks did he train for the Lyle fight?

A I don't remember.

Q When he boxes with sparring mates, how long does he usually do that with his sparring partners each day?

A I varies.

Q What is the shortest amount of time?

A Sparring?

Q For Lyle?

A Sparring or working?

Q Working in the gym.

A An hour and a half, two.

B2 Q How about sparring partners, that is, including everything? Is that what you are saying?

A Yes.

Q The hour and a half including jumping rope, sparring partners and everything.

A Sparring with the gloves, the rest of the work,

calisthenics, skipping rope and the rest of the other things that go with a workout.

Q During these two hours, while he was in the gym working out, did he have to take frequent breaks or was he able to go the full two hours?

A No, he worked regular.

Q Straight through?

A Straight through.

Q No breaks?

A You break a minute between rounds. In other words, you work three, you stop one.

Q Forgetting the break in between rounds, when he's doing whatever he's doing, working with the bag, punching the bag, he would go the straight two hours without taking a break; is that correct?

A You take those minute breaks, yes.

Q Other than that, no other breaks; right?

A No.

Q Did he have any particular physical problems during that time?

MR. SHARFMAN: Objection.

THE COURT: Overruled.

A Not to my knowledge.

Q And you were there for five weeks before the

right; right?

A Yes. I don't know if I was there the full five weeks.

Q At a minimum, how many weeks were you there?

A I got to be honest with you, I don't even remember where we trained for that fight.

Q Forgetting where it was.

A Yes, I think I was there about two or three weeks.

Q Two or three weeks. And no problems, physical problems, during those two or three weeks?

A No problems.

Q How often, sir, during a day did he go to the bathroom?

A I don't go with him to the bathroom.

Q I understand.

Were you there?

A I don't know.

Q You don't know?

A I don't know.

Q Was it a problem at camp that he had to take frequent breaks to go to the bathroom?

A I don't know.

Q You were there; right?

A Yes, during his training.

Q And you don't remember any problem, do you?

A I don't remember any problems.

Q As his trainer, one of your prime concerns is the condition of Muhammed Ali's body; is that correct?

A Yes.

Q Has he got any problems right now?

MR. SHARFMAN: Objection, your Honor.

A He's not training right now.

Q Physically.

A I don't live with Muhammed in his personal life. I'm only with him when he boxes.

Q If the man has a physical problem, sir, isn't that of prime concern to his trainer?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained in light of the witness' responses. It has already been answered.

Q He fought in Madison Square Garden against Norton on September 28th; correct?

A Correct.

Q How long were you with him prior to the Norton fight?

A Three weeks all told.

Q Were there any fights, sir, when you were with

him the five weeks that you had mentioned?

A In Africa.

Q In Africa?

A We were there for two months. We couldn't leave.

Q During these three weeks that you were with him getting him ready while he was in training for the Norton fight, did he have any physical problems?

A Not to my knowledge.

Q After the Norton fight, did he have any physical problems?

A Not to my knowledge.

Q Did he have any physical problems in preparing for the Bugner fight?

A No.

Q Andy problems physically after the Bugner fight?

A No.

Q Did he have any physcial problems after the Lyle fight?

A Not to my knowledge, no.

Q Did he have any physical problems after the fight with Joe Frazier in Manila?

A No.

Q Did he have any physical problems in preparing for the fight in Manila?

A Not to my knowledge, no.

Q Did he have any physical problems preparing for the fight with the wrestler in Japan?

A No.

Q Did he have any physical problems after the fight with that wrestler in Japan?

A Yes.

Q What were they?

A He legs. He had some hematomas in his legs from getting kicked by the wrestler.

Q Any other problems?

A No.

Q Has he had any physical problems that you know of since the Wepner fight up until today, except for the problems in his legs that he got in Japan?

A I don't know.

Q None that you know of?

A No.

THE COURT: He said, "I don't know" and you changed it.

MR.SULLIVAN: I'm sorry. I said, "None that you know of."

THE COURT: He said, "I don't know." That is different than saying, "None that you know of."

Q Did he ever tell you of any physical problems that he had?

MR.SHARFMAN: Objection.

THE COURT: Overruled.

A No.

MR. SULLIVAN: No further questions.

THE COURT: Have you any cross?

MR. SHARFMAN: Yes, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. SHARFMAN:

Q Mr. Dundee, prior to beginning a workout session in the gym while he's training, is it Mr. Ali's habit not to drink liquids for a period of several hours?

A Yes.

MR.SULLIVAN: I'm sorry. I apologize. Could I have the question.

(Record read.)

Q How long have you been Muhammed Ali's trainer, sir?

A Since 1960.

Q You were at the Ali-Wepner fight?

A Yes.

Q Do you have any opinion as to the job that the

referee, Tony Perez, did refereeing that fight, sir?

A Yes.

Q What is your opinion, sir?

A He did a bad job.

Q A bad job, sir?

A Yes. He never had control of the fight. It was the dirtiest fight I ever saw.

Q How many fights have you seen in your career, sir?

A A couple of thousand that I've worked and I've seen more than that.

Q This was the dirtiest fight that you ever saw?

A The dirtiest.

Q The dirtiest on whose part?

A Wepner.

B3 Q Prior to the Ali-Wepner fight you indicated on direct examination that you had gone over to the Wepner training camp. Can you recall how many times you did that, sir?

A I went to his workouts three or four times and observed his training.

Q What did you observe there?

A I observed Wepner belaboring his sparring partners, hitting them with rabbit punches, hitting them with kidney punches, and one day he kneed a guy. I couldn't believe what

I was looking at.

Q Did you report that to the press?

A Yes. In fact, I was covering the workout like a newsman and I was making notes and one of the papers took it down that one round they counted three rabbit punches, three kidney punches and one knee.

Q That is against the sparring partner?

A That is correct, against the sparring partner.

Q Did you make any statements to the press about dirty fighting in the upcoming Ali-Wepner fight?

A Yes.

Q What did you say to the press?

A I told them about the dirty tactics that he was using on the sparring partners.

Q That Wepner was using?

A Right. In fact, one paper I even quipped that they ought to put a glove on Wepner head because he's always butting.

THE COURT: What?

THE WITNESS: Using the head, butting.

Q Did you report what you had seen to Mr. Ali?

A Yes.

Q Do you recall whether Mr. Ali made any statements to the press prior to the Ali-Wepner fight concerning

dirty fighting?

A No.

Q You were also at the second Frazier fight, were you not, Mr. Dundee?

A Yes.

Q Do you recall the second round of that fight, sir?

A Yes, I do.

Q Do you recall that that round was stopped short by Mr. Perez, the referee? Do you recall it was stopped short?

A Yes, sir.

Q At the time that Mr. Perez --

MR. SULLIVAN: Your Honor, may I object just to leading?

THE COURT: What is that?

MR. SULLIVAN: I object to the leading.

THE COURT: Leading?

MR. SULLIVAN: I know it is cross. It is a question of who the witness is.

THE COURT: Don't you understand the rule on cross-examination permits leading questions?

MR. SULLIVAN: Not in view of who the witness is, your Honor.

THE COURT: Is there a case that supports you?

MR. SULLIVAN: I don't know that. I object.

THE COURT: Fine, I do know it. He may proceed by cross-examination in the usual way.

Q Now, at the time that Referee Perez stopped the second round of the Ali-Frazier fight in Madison Square Garden, did you hear any bell, Mr. Dundee?

A No.

Q Where were you standing, sir?

A I was in the corner.

Q In the corner of the ring? About how many feet from the ring, sir?

A Well, it is approximately a 20-foot ring, so I was about 20-foot away from the action. I was in the opposite corner.

Q You were in the opposite corner from where the action was?

A Correct.

Q Did you see any light go on?

A No light went on.

MR. SULLIVAN: Objection, your Honor, improper cross.

THE COURT: Overruled.

Q Following the Ali-Frazier fight, did you and

Mr. Ali have any discussion about the stopping of the second round?

A We discussed it, but my feeling was: What's the difference. We won the fight.

Q Now, do you know whether there is gambling in Las Vega, Nevada on the round in which a fight will end?

A Yes.

Q Is there, sir?

A Yes.

Q What fouls did you observe Mr. Wepner using on Mr. Ali in the course of the fight between Mr. Ali and Mr. Wepner in Ohio?

A Every foul that could be declared a foul, like rabbit punches, kidney punches, butting.

Q You saw them all?

A All of them.

Q Did you see Mr. Wepner attempt to knee Mr. Ali?

A Yes, in one round he tried to knee him.

Q When was the last time you saw that kind of tactic in a fight prior to the Ali-Wepner fight?

A I think the last time I saw a fight like that, even compared, was Tony Galento and Lou Nova in Philadelphia. I was about a nine-year old kid.

Q Do you recall in the ninth round the time that

Mr. Ali hit the canvass, to use a boxing phrase which I'm sure you are familiar with, sir?

A I recall that.

Q Is this picture an accurate representation of what happened at that time, what you saw?

A Oh, yes.

THE COURT: "This picture" being what exhibit?

MR. SHARFMAN: This picture being Exhibit M6.

Q As I recall your direct testimony, sir, as soon as --

THE COURT: Don't repeat the testimony. Just ask a question.

THE WITNESS: Could I look at that picture closer?

MR. SHARFMAN: Certainly.

THE WITNESS: There is a reason.

THE COURT: The clerk will give it to him.

THE WITNESS: Thank you. I got to see the faces in the crowd. Okay. I was looking over here and over here (indicating).

Q When that happened you called into the ring at Mr. Perez, did you not, Mr. Dundee?

A I yelled at Tony Perez and I told him, "It was no knockdown. He stepped on his foot," because I saw it clearly.

Q Did you speak to him between rounds?

A When the bell rang I climbed into the ring and said, "It was not a knockdown. He stepped on his foot."

Q Did you complain to Mr. Perez through the course of the Ali-Wepner fight about the rabbit punching?

A Yes.

Q Did you complain during the first round?

A From the corner, yes.

Q You called in?

A Yes.

Q Besides that, in the first round, did you complain throughout the fight?

A Throughout the fight I kept telling him, "Watch those rabbit punches."

THE COURT: Have you got much more?

MR. SHARFMAN: No, sir. I have no other questions. Thank you, Mr. Dundee.

THE COURT: Any questions, Mr. Eldridge?

MR. ELDRIDGE: No, sir.

THE COURT: Any redirect?

MR.SULLIVAN: Yes, sir.

THE COURT: How long will it take?

MR. SULLIVAN: I anticipate a half-hour.

THE COURT: All right, go ahead.

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Dundee, before 1960 when you first came with Muhammed Ali, you had been with Pete Radamacher; is that right?

MR. SHARFMAN: Objection, your Honor.

THE COURT: That is unrelated to the cross-examination and it is disallowed as redirect.

B4 Q You told Mr. Sharfman, am I correct, sir, that you first came with Mr. Ali in 1960?

A 1960.

Q Who had you been with before that?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Same ruling.

What tape is this?

MR. SULLIVAN: Plaintiff's Exhibit 2, your Honor.

Q Mr. Dundee, I'm going to show you Round 8. How many times did Mr. Wepner try to knee Mr. Ali in the Wepner fight?

A Once.

Q Do you remember what round?

A No, I don't.

Q Would the round right before the knockdown round refresh your recollection?

A I don't remember, really.

Q Watch this round and first tell me if the scene that is shown in this round is the scene where he tried to knee him purposely.

(Videotape of Round 8 was played.)

Q Is that it?

A Looked like he tried to knee him there.

Q Was that the one time you are talking about?

A I don't remember. I know he tried to knee him. I don't remember if that is the exact incident. He just kicked him.

Q He didn't do a good job?

A No, he just kicked him.

Q Watch the rest of it. Let me put it back.

(Videotape played.)

A That was a kick.

Q In your experience in boxing, was that kick intentional?

A Was it intentional? It looked intentional, yes.

Q Had Wepner just missed with a punch, a round-house right?

A A roundhouse right miss and came back with a right leg.

Q And after he threw that roundhouse right and

missed, didn't he also fall forward into the ropes?

MR. SHARFMAN: Objection.

A No.

Q Wepner didn't?

A No.

Q Did Mr. Wepner frequently in the fight throw roundhouse rights and lefts that he missed with and then lose his balance?

A He missed several times, yes, but he never missed when he was rabbit punching. In clinches he used to rabbit punch.

MR. SULLIVAN: I ask that that be stricken.

A Right.

Q Many times he did miss, he certainly did miss?

A He did miss.

Q Isn't it a fact that he frequently, when he threw those roundhouse punches, he missed and lost his balance and stumbled?

A Yes.

Q It happened frequently, didn't it?

A Yes.

Q Isn't that what happened there?

A No, that was a deliberate foot kick. The man was on balance.

Q Did you see after it, when Mr. Ali motioned that it was a kick and Mr. Perez -- Mr. Wepner shook his head and put up his gloves?

A Yes.

Q Did you see that?

A Yes.

Q What does that mean in boxing?

A It means he apologized for kicking him.

Q Is that what it means?

A Yes.

Q It means "I tried to kick you on purpose but I'm sorry I missed"?

A Yes, he's apologizing for the altercation, which fighters do do.

Q For trying to kick him or for missing?

A For kicking him.

Q He's not saying, "I didn't mean it"? Isn't that what he is saying?

MR. SHARFMAN: I would object.

A Sort of an apology, certainly.

Q Couldn't it be, sir, that he didn't mean it?

A I don't know.

Q You don't know?

A No. It looked like it was intentional to me as

I described it.

Q When you went over to Wepner's training camp and you saw him kidney punching, rabbit punching and kneeing people, did you tell Mr. Ali about this?

A Yes.

Q Did you tell him about the kidney punching?

A Yes.

Q And the rabbit punching?

A Yes.

Q And the kicking?

A Yes.

Q Did Mr. Ali try to prepare to defend himself against this in any way prior to the fight?

A No.

Q When Wepner did these things were they soft rabbit punches to his sparring partners or hard blows?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Can you describe the rabbit punches that Wepner threw his sparring partners?

MR. SHARFMAN: Objection, your Honor.

THE COURT: You may describe the rabbit punches.

THE WITNESS: He was dropping right hands behind the neck fo the sparring partners. They were kind of

shorter than Muahmmed, so they were having a downward effect.

Q When you saw this, did anyone at Ali's camp make an attempt to call off the fight?

A I can't hear you. You turned around.

Q When you saw this, did anyone in Ali's camp make an attempt to call of this fight?

A No.

Q The whole camp knew that Wepner was training to fight dirty; correct?

A I don't know.

Q Well, I mean, you knew.

A I knew.

Q Muhammed Ali knew.

A Yes.

Q Drew Bundini Brown knew.

A Yes, he was spying too.

Q That is fine.

When you say spying, sir, what do you mean?

A That is a phrase used in boxing. It is a boxing vernacular.

Q WAs Mr. Ali's brother in the corner that night of the Wepner fight?

A He was around there.

Q Had he been at the training camp ahead of time?

A I don't know what day he came in. I don't know.

Q Do you know if he knew that Wepner was training to fight dirty?

A I don't know.

Q Did you talk about it, you and Ali?

A Yes.

Q What did Ali say to you about it?

A "Don't worry about it."

Q Did he say why?

A He said, "Don't worry about it. I'll take care of it."

Q Do you know what he meant by "I'll take care of it"?

A He said, "If he tries to do that I will be able to defend myself."

Q You knew that Perez was going to be the referee a day or two before?

A Come again?

Q You knew that Perez was going to be the referee a day or two before?

A Yes. It was in the paper.

Q Did anybody say to Perez, "Tony, watch out for the rabbit punches. This man is training to fight dirty"?

A I don't know.

Q Did you talk to Perez before the fight?

A No.

B5 Q Did you see if Ali talked to Perez before the fight?

A I don't know.

Q Sir, I believe you told Mr. Sharfman that there was gambling in Las Vegas on what round the fight would end; right?

A Yes, gambling is legal in Las Vegas.

Q How do you know that there is such gambling? How do you know?

A I've been to Las Vegas many times on vacation.

Q Have you ever placed a bet on any fight?

A I don't bet on fights.

Q Did you ever see Tony Perez bet on a fight?

A I don't know.

Q Did you ever see him bet on a fight?

A I don't know.

Q Not whether you know if he ever did, but did you ever see him bet on a fight?

A Oh, no.

Q Did you ever see Tony Perez with anyone who you knew or suspected to be a gangster?

A No.

Q Were you with Muhammed Ali the day of the Wepner fight during the day?

A You turned around on me again.

Q I do it. I'm sorry.

Were you with Muhammed Ali on the day of the Wepner fight during the day?

A We had the weight-in, I believe, the day before.

Q Right.

A Yes, I was with him.

Q You were with him?

A Yes.

Q When you were with him, did he tell you about any anonymous phone calls that he got the day of the weigh-in, the day before the fight?

A Yes.

Q He did?

A Yes.

Q He got anonymous phone calls -- what did he tell you?

A He said, "Somebody called and said they had the referee."

Q This was the day before the fight?

A Yes.

Q Correct?

A Yes.

Q Did he get any more anonymous phone calls before the fight after that one?

A Not to my knowledge.

Q Did he get any before that, if you know?

A Not to my knowledge.

Q Do you remember specifically, sir, what he said to you about the anonymouse phone call?

A He told me he got a call and he said, "Somebody called: 'Well, we got you. We got the referee.'"

I told him, "Muhammed, forget about it. You got nuts in every kind of profession."

I told him to forget about it.

Q You knew prior to that phone call what had happened in the Frazier fight with Mr. Perez; correct?

A Yes.

Q Had Ali told you that he had gotten any anonymous phone calls before that fight?

A The Frazier fight? Yes.

Q He had?

A Yes.

Q How many?

A One.

Q What was that one about?

A Same kind of thing.

Q Same kind of thing?

A Yes.

Q Had he ever gotten one before other than the Frazier and the Wepner fights, any other phone call?

A Not to my knowledge.

Q Never before?

So you knew that when Perez refereed the first fight he got a phone call?

A Yes.

Q Then you knew what had happened in the Frazier fight. Then he got another phone call the day before the Wepner fight, you tell us, and you knew Perez was going to be the referee of that Wepner fight; correct?

A Yes.

Q Taking all those things into consideration, weren't you concerned about the possibility that they had the referee?

A No.

Q Why not?

A We won the Frazier fight.

Q That is right.

Well, in your opinion, though, sir, didn't Tony Perez try and make Muhammed Ali lose that fight?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

We are seeking to get the facts from the witnesses. I think you covered that many times during the day.

Q Now, the bad job that Tony did in the Wepner fight -- now, while you said it was a bad job, sir, in your opinion was Mr. Perez doing an honest job to the best of his ability?

A I caught the last part of what you asked me. You turned away again.

Q I apologize.

A Forgive me. I have low hearing.

Q You said to Mr. Sharfman that Mr. Perez did a bad job in the Wepner fight. Now, while he did a bad job in your opinion, isn't it a fact that in your opinion he was doing an honest job?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Do you have any opinion as to the kind of job Tony Perez was trying to do refereeing that fight?

MR. SHARFMAN: Objection.

Q The Wepner fight?

MR. SHARFMAN: Objection.

THE COURT: Overruled, you may give the answer

to that question.

A Come again?

THE COURT: The reporter will read it to you.

(Question read.)

A My opinion was that he did a bad job.

Q Do you have an opinion as to the honesty or dishonesty of that job?

MR. SHARFMAN: Objection, your Honor.

THE COURT: He may state whether he has an opinion, yes or no.

A Yes.

Q What is your opinion?

MR. SHARFMAN: Objection.

THE COURT: I'll let him state it.

A I always felt he was an honest man.

MR. SULLIVAN: No further questions.

THE COURT: Anything else, Mr. Sharfman? Is that all?

MR.SULLIVAN: May I ask one more question.

Q When you say "always," sir, does that include today?

A Yes.

MR. SULLIVAN: Thank you. One more question.

Q Do I gather from that --

THE COURT: Just a minute. We are not concerned with what you do or don't gather.

Q You do not, Mr. Dundee, do you, believe what Muhammed Ali said about Mr. Perez?

MR. SHARFMAN: Objection.

THE COURT: It is not the function of one witness to weigh the credibility of another witness. That is for the jury.

MR.SULLIVAN: Thank you, your Honor, no further question.

RECROSS-EXAMINATION

BY MR. SHARFMAN:

Q In all the years you have been Mr. Ali's trainer, would it be true to say that he has never complained to you about physical injuries that he suffered?

A Never.

Q But he has suffered physical injuries during that time, hasn't he?

A Oh, yes. He suffered a broken jaw in the Norton fight in the first round and never complained the whole fight.

MR.SHARFMAN: Thank you, sir, no further questions.

THE COURT: All right, you may step down.

(Witness excused.)

THE COURT: We'll recess, ladies and gentlemen,

until 10:30 tomorrow morning, and there is a good chance that we'll recess early for the weekend so that the ladies can go to the hairdresser and to the retail stores, if they wish. So that in all probablility, unless there are witnesses that have to be heard, we'll have a shortened afternoon.

You may be excused for the evening.

(At this point a spectator attempted to address the Court.)

THE COURT: Please wait until the jury has left the courtroom.

(The jury left the courtroom.)

(Continued on next page.)

THE COURT: Yes, sir?

GEN. JULIAN: My apologies to the Court.

My name is General Hubert Black Eagle Julian. I am chairman of the Board of Black Eagle Global, Inc., an arms corporation registered with the State Department with assets of over $219 billion.

I have sat here, your Honor, with these ladies and gentlemen and observed the solemn manner in which you have administered with patience and tolerance, your Honor. I'm asking you on behalf of your favorite charity to accept $100,000 to your favorite charity from your humble servant as an emphatic indication and a recommendation to the President of the United States that you should be on the Supreme Court and not in this court because of your wisdom. Having studied at the National Law Institute myself and listened to all the debates, and Old Bailey and other courts, it is a compliment deserving of your Honor.

THE COURT: Thank you very much for the compliment. I must respectfully --

GEN. JULIAN: I will address a check for $100,000 to any favorite charity of your Honor because you are a rare judge and a credit to the profession.

THE COURT: Thank you very much for your kind words. I didn't get your name.

GEN. JULIAN: General Hubert Julian. I was the first black flyer in the world.

We made over 219 billion dollars selling gold. I'm now supplying arms by order of the State Department to help the beleagured Africans who are fighting for their freedom.

THE COURT: Thank you very much. I must return the compliment to you and suggest that you select your own charity.

(Court adjourned to Friday, October 15, 1976 at 10:30 a.m.)

Perez

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Anthony Perez, Jr.,

vs 75 Civ. 1824

Muhammed Ali, et al.,

New York, New York
October 15, 1976 - 10:00 a.m.

(Trial resumed.)

(In the robing room.)

THE COURT: Who has an application?

MR. SHARFMAN: We both do.

THE COURT: Come on, gentlemen, it's getting to be late.

MR.SULLIVAN: Yesterday your Honor asked me to come with my authority to impeach the witness on collateral matters. In the Rules of Civil Procedure, Section 43(b), this is the old rule, it has been changed and it states that they eliminated it since it was -- when this rule was eliminated, put into the Rules of Evidence.

It states that a party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party and interrogate him by leading questions, and contradict and impeach him in all respects as if he had been called by the adverse

party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also and may be cross examined by the adverse party.

THE COURT: What Rule of Evidence is that?

MR. SULLIVAN: Rule of Civil Procedure, your Honor, 43(b).

Then the current rule of evidence, Section 407 states the credibility of a witness may be attacked by any party including the party calling him. My contention would be that when it was put in there as the Rule of Evidence and Section 43(b) was eliminated, that it was intended to continue 43(b), and I believe 43(b) states that he can be impeached in all respects as if he had been called by the adverse party, and Rule 607 doesn't say anything about limiting it to collateral matters.

Therefore, I would contend that Mr. Ali, who I believe -- could show half of his testimony to be easily impeachable. We should be permitted to impeach him.

THE COURT: What do you want to do now.

MR. SULLIVAN: Well, as I had stated yesterday morning --

THE COURT: I said what do you want to do now.

MR.SULLIVAN: Put him back on and impeach him.

THE COURT: Any objection?

MR. SHARFMAN: Well, your Honor, I don't think that rule changes the rule about impeaching on collateral matters.

THE COURT: I have my own views as to what is going on here.

What else do you want to do today.

MR. SULLIVAN: The only other thing I wanted to see your Honor on was --

THE COURT: I want to tell you this: You have played that Exhibit 1 and Exhibit 2 ad nauseum, and if you have any intention of using those again I am going to tell you right now that I regard it as a dilatory act on your part.

MR. SULLIVAN: Yes, your Honor. I have no intention of showing anything, except possibly if Mr. Cosell says I can't remember -- nothing to do with the fighrs but just the interview between Ali and Cosell. If he can't remember what was said, I might attempt to show that just to refresh his recollection of what was said.

THE COURT: Haven't you got a transcript of it?

MR. SULLIVAN: Yes.

THE COURT: Why don't you show him the transcript. Why is this all going on in the courthouse for?

MR. SHARFMAN: Your Honor, the next thing was this exhibit, M-16 for identification.

THE COURT: I am going to exclude that.

MR. SULLIVAN: I withdraw my objection to that.

MR. SHARFMAN: You withdraw your objection to this exhibit?

MR. SULLIVAN: Yes, sir.

MR. SHARFMAN: May I then put it in evidence, your Honor?

THE COURT: If there is no objection, I have no objection either.

MR. SULLIVAN: The other thing that I wanted to do --

MR. SHARFMAN: May I read it to the jury with the statement that this is the article Mr. Ali testified he read before on going on the Howard Cosell show?

THE COURT: Yes.

MR. SULLIVAN: Page 394 of the book, your Honor --

THE COURT: What language? Will you mark it out?

MR. SULLIVAN: There is a checkmark there. It is almost a page and a half which specifically contradicts everything about whether or not his hands were hurting in the second round and whether or not he had hit the man hard, whether or not he had gone to a doctor.

MR. SHARFMAN: All you have to do is look at the tape of that second round and see whether Joe Frazier was hit hard.

THE COURT: What about this passage here, is there any objection to this?

It seems to me we are getting into picayune stuff that is going to have no essential bearing. The lawyers have gotten into the frame now where they are creating a verbal bout and carrying on with a bout that Perez started in the first place.

MR. SHARFMAN: Well, sir, I would object to the admission of this. I think it has --

THE COURT: What is the harm in all of this. It is a lot of nonsense.

MR. SHARFMAN: It is a lot of nonsense and it has no connection with Ali.

THE COURT: It all has to do with the question as to whether Ali was in position to knock him out at the time when Perez improperly called the fight off. It can't be any doubt here. Perez admitted on the stand that he improperly called the fight off. He says that he thought he heard something, but he admits that it was before the end of the round.

MR. SHARFMAN: Doesn't that make this utterly

relevant then. It makes it a picayune point that has no essential basis, and I don't want to leave anybody in the posture of screaming in another court that he was deprived of an opportunity to present everything.

MR. SHARFMAN: Permit me to object to its submission, your Honor, on the ground of relevance, materiality, competence and so forth.

THE COURT: It may be admitted. I may have some things to say in charge of the whole affair.

MR. SULLIVAN: May I just show you one short paragraph in addition, that is the second paragraph there?

THE COURT: That's not signed for by Mr. Ali. That's a jacket prepared by some publisher, and it is not part of the book.

MR. SULLIVAN: Yes, your Honor. Thank you.

THE COURT: I am telling you right now that you are overtrying this case. I watched you making side remarks to the jury at the rail there, not loud enough for the reporter to hear, and I don't like it. If any more occurs, I will abort the trial and take some action about it. I don't want you to be talking to Ali or Ali talking to you or anybody else talking in front of that jury that isn't recorded out loud on the record.

MR. SULLIVAN: Your Honor, I would like to state

for the record that Mr. Ali made all kinds of statements to me that the reporter could not hear, and I never said a word to Mr. Ali that --

THE COURT: Please, Mr. Sullivan, I wasn't born yesterday, and I know what is going on. You are standing next to that jury and making sotto voce remarks that are not being recorded. I am going to put a stop to it, and I don't like it, and get away from that jury box when you examine.

MR. SHARFMAN: Your Honor, may we go off the record for a moment?

THE COURT: Are we through with the business?

MR. SHARFMAN: Yes, sir.

(Discussion off the record.)

(In open court.)

(Jury present.)

THE COURT: Good morning, ladies and gentlemen, I am sorry we were delayed this morning, but it was due to circumstances beyond our control.

MR. SULLIVAN: I call Mr. Cosell to the stand.

H O W A R D C O S E L L, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Cosell, do you recall, sir, taping an interview for the Wid World of Sports show with Muhammed Ali to comment and discuss the Ali-Wepner fight?

A Yes, sir.

Q During the taping of that interview, sir, do you recall that there was a comment by Mr. Ali about his black behind that was blacked out and that part of the program was retaped?

A I didn't recall it originally. It was called to my attention subsequently.

Q Do you recall it now, sir?

A It is very dim recollection. It amounted to, I think, a sentence or a half a sentence.

Q During that taping, sir, other than that sentence or half sentence, at any other time was anything else blacked out?

A Not to the best of my recollection.

Q Can you tell me, sir, what -- withdrawn.

For how long have you been involved in commentating and other areas of boxing matches?

A More than 20 years.

Q Have you seen many of the heavyweight championship

fights?

A Yes.

Q What is Tony Perez' reputation in the community as a referee?

MR. SHARFMAN: Objection, your Honor.

A Overall I would say good.

Q In New York, under the rules of the New York State Boxing Commission, is holding a foul?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Sustained.

Are you an expert in fighting matters or an expert in public relations?

THE WITNESS: Judge, I have sometimes been called most inexpert at public relations.

THE COURT: Fighting is -- you yourself were not a fighter?

THE WITNESS: If I were, Judge, we would both have a major suit.

No, sir, I was never a fighter.

THE COURT: You have never sat on a fight commission?

THE WITNESS: I have never been a member of the New York State Athletic Commission.

THE COURT: Have you had any expertise at all

in judging a fight, sir?

THE WITNESS: Expertise, sir, is --

THE COURT: The profession itself?

THE WITNESS: No.

THE COURT: Objection is sustained.

Q You commentate many of the heavyweight championship fights, do you not?

A Yes.

Q In order to competently do so, do you not acquaint yourself with the rules of the New York State Boxing Commission?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

A The answer is yes.

Q Do you know, sir, whether or not holding is a foul according to the rules of the New York State Boxing Commission?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Overruled.

A That, sir, relates to a full reading of the rules, and it becomes a matter of definition, then interpretation by the official. It is not a question to be answered yes or no.

Perez

Tk 2
B1
a.m.

Q Mr. Cosell, do you remember testifying in an examination before trial on July 7, 1976 at the offices of Mr. Ali's attorney?

A Yes.

Q Page 19.

Do you remember, sir, this question and this answer at that examination before trial:

"Q Do you know whether the Commission lists holding as a minor foul?

"A Holding is construed to be a foul. I don't know how the New York Commission puts it."

Do you remember that question and answer?

A Yes.

Q May I ask you this, sir: Do you know whether the New York State Commission lists the deliberate maintenance of a clinch as a foul?

A No, I do not.

Q Do you remember this question and this answer as that EBT, Mr. Cosell:

"Q Do you know whether the New York State Commission lists the deliberate maintenance of a clinch as a foul?

"A Yes."

Do you remember that question and that answer?

A Yes, if it is there.

Q Did you, sir, have a telephone conversation with Mr. Perez prior to the taping of the Ali-Wepner Wide World of Sports show?

A Yes.

Q In that phone conversation, sir, did you say anything to Mr. Perez as to the possibility of Muhammed Ali repeating the type of comments he had made at the initial press conference?

A No, I didn't.

MR. SHARFMAN: Objection, your Honor.

Q Did you not, sir, say that if anything like that happened you would try to control Ali?

A Absolutely not.

Q Did you tell Mr. Ali prior to the taping of that interview about your phone conversation with Mr. Perez?

A No.

THE COURT: Can you fix the date, please?

MR.SULLIVAN: I'm sorry.

Q By that, I meant -- how many phone conversations did you have with Mr. Perez?

THE COURT: Please date the interview so the jury has it clearly in mind in relationship to the Wepner fight.

MR.SULLIVAN: Yes.

THE COURT: I take it that the Wepner fight was on March 24, 1975.

MR. SULLIVAN: All right.

Q Assume, Mr. Cosell, that the Wepner fight was on March 24, 1975; that the taping of the interview was on March 28, 1975. How many phone conversations did you have with Mr. Perez between that time?

A One.

Q Prior to that taping on March 28, 1975, did you tell Mr. Ali about that phone conversation?

A No.

Q Did Ali himself request that anything be blacked out of the taping?

MR.ELDRIDGE: Objection, your Honor.

THE COURT: Overruled.

A To the best of my recollection, no.

Q And that taped interview with Ali was shown on television, was it not, sir?

A Yes.

Q And the comments that were shown on that television show by Mr. Ali, he did say all those things to you in your presence, did he not, sir?

MR.SHARFMAN: Objection, your Honor, the tape speaks for itself.

THE COURT: You are not questioning the accuracy of the tape, are you?

MR.SULLIVAN: No, I'm not questioning the accuracy.

THE COURT: You are not questioning the accuracy of the tape, are you?

THE WITNESS: No, sir.

THE COURT: All right.

Q Do you remember Mr. Ali saying that Perez had probably been paid by gangsters in the Frazier fight?

A I would like to see the transcript of the interview, if I may, so we can get the precise words.

MR. SULLIVAN: May I play the tape?

THE COURT: No, we have played the tape enough times. We have seen enough television. The jury has in mind what the evidence has been. Do we have to take up the time of refreshing this witness' recollection? Perhaps you have a question you wish to ask as to the substance without delaying this.

Q Do you remember, in words or substance, that Muhammed Ali said that Perez had been probably paid by gangsters in the Frazier fight?

A I have a recollection, words or substance, of something in that vein.

Q Sir, when it was said by Mr. Ali, did you personally believe it?

A What is that?

Q When thatcomment was made by Mr. Ali, did you believe that comment to be true?

MR. ELDRIDGE: Objection, your Honor. May I pass up --

THE COURT: This is marked Court Exhibit 17. Show it to Mr. Sullivan. Mr. Sullivan, look at the first sub-division of it. Nevermind the balance of it.

In view of the fact that there is no claim by the plaintiff against ABC in this case, the personal belief of the witness, an employee of ABC Sports or ABC, is of no relevance or materiality to the issues in this case and the objection is sustained.

B2 Q Mr. Cosell, for continuity's sake I ask you again, did you not, sir, tell Mr. Perez that you would try to control Muhammed Ali in his comments on that taping of the Wide World of Sports interview?

MR. ELDRIDGE: Objection.

THE COURT: Sustained. It has already been asked and answered.

Q Do you remember this question and answer during that same deposition at page 165:

"Q When Mr. Perez told you that Mr. Ali was embarrassed about the Wepner fight and was trying to make Mr. Perez a scapegoat, did you believe that to be true?

"A I never even thought about that. I passed no judgment on that at that time.

"Q What did you say in response to Mr. Perez' statement?

"A I've already said that. I said, 'Tony, I will try to control Muhammed during the course of the interview and I will acquaint him with the positions that you just established.'

"Again, not a precise quotation, but my best recollection of the substance of my verbiage."

Do you remember that question and that answer, sir?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: The objection is overruled.

Do you remember being asked that question and giving that response?

THE WITNESS: I remember that question and that response.

It differs materially from your earlier question to me in its verbiage.

MR.SULLIVAN: May I have Mr. Cosell's answer repeated?

THE COURT: He says that this context is a little bit different than the way you put it before.

Q Let me put it this way, Mr. Cosell: Did you not tell Mr. Perez that you would try to control Muhammed Ali during the interview?

A I believe that is out of context, sir. I told Mr. Perez that I would certainly present his side of the issue to Ali during the course of the interview as a reporter in a controversial situation pursuing the subject and bringing all the facts and charges before everybody.

Q Yes or no, Mr. Cosell. Did you ever use the words to Mr. Perez, "I will try to control Muhammed Ali"?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Sustained.

MR. SULLIVAN: No further question.

CROSS-EXAMINATION

BY MR. SHARFMAN:

Q Mr.Cosell, I show you a book which has been marked Plaintiff's Exhibit 10, entitled "Cosell by Cosell," and ask you if you can identify this document, sir?

A Yes, it is a book I wrote in 1973, a paperback copy.

Q How long have you known Mr. Ali, Mr. Cosell?

A Since the Olympiad in Rome - immediately there-

after, in 1960.

Q Is it true, Mr. Cosell, that you believe Mr. Ali trusts you?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Cosell, is it your testimony here today, sir, that in the interview with Muhammed Ali following the Chuck Wepner-Muhammed Ali fight, that is, the interview that was shown following the fight, that you were repeating to Mr. Ali what Mr. Perez had said to you?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Well, it is objectionable as to form. Put it very directly: Did you repeat to Mr. Ali what Mr.Perez had said?

Q Did you repeat to Mr. Ali in the course of taping the interview for the Wide World of Sports program on March 28, 1975, Mr. Cosell, did you repeat at that time to Mr. Ali what Mr. Perez had said to you in the telephone conversation that you testified you had with him?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Overruled.

A The answer to that question is no. I asked my own questions based upon the public issues at the time.

THE COURT: I think that the inquiry was not

whether you asked your own questions, but did you convey to Ali what Perez had said?

THE WITNESS: The answer to that is yes, based upon all of the public print matter at the time and the positions that Perez had established.

Q Established to you in his phone call to you, sir; is that right?

A It was no different from that which was in the prints.

MR. SHARFMAN: I move to strike the answer.

THE COURT: Denied. He says that the talk repeated what was already printed a couple of days earlier, I suppose.

Is that right, a couple of days earlier?

THE WITNESS: That is correct, your Honor.

Q Do you recall Mr. Perez telling you that Mr. Ali had outdone Mr. Wepner in dirty fighting?

A I recall Mr. Perez --

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Overruled.

A I recall Mr. Perez saying that that had been printed in the newspapers several days earlier.

Q And you saw it in the newspapers and you heard Mr. Perez tell it to you on the telephone, did you not, sir?

A That is correct.

Q Did Mr. Perez say to you in his telephone call to you prior to the taping of the interview show that Muhammed Ali was embarrassed because he had done so poorly against Chuck Wepner?

MR. ELDRIDGE: Objection.

THE COURT: Overruled.

A That is correct.

Q Did Mr. Perez say to you when he called you up before the taping of that interview show that Mr. Ali had tripped over his own feet and it was a clean knockdown in the 9th round of that fight, sir?

A I don't recollect Mr. Perez saying that, not to the best of my present recollection, anyway.

THE COURT: Did he say it was a clean knockdown?

THE WITNESS: I don't recollect whether he said that on the phone in the phone conversation at all, Mr. Sharfman. I don't know that I discussed a knockdown with him.

MR. SHARFMAN: I have no further questions for the witness. Thank you.

THE COURT: Are there any questions, Mr.Eldridge?

MR. ELDRIDGE: I have no questions of Mr. Cosell on behalf of my client.

THE COURT: Any redirect?

MR. SULLIVAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Cosell, do you recall, sir, that during your commentary of the 9th round of the Ali-Wepner fight when Ali hit the canvass you said also that Mr. Ali was clearly embarrassed?

MR. ELDRIDGE: Objection, your Honor, improper redirect.

THE COURT: I'm going to sustain the objection. I don't think it makes much sense what this witness said. The issue here is the statements that were made by Mr.Perez about Mr. Ali and the claim that Mr. Ali has asserted against Mr. Perez for having said those things.

B3 Q Mr. Cosell, the book you wrote - you will admit, sir, that you read the book you wrote, didn't you?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: I don't follow the force of that. What is that question?

(Question read.)

THE COURT: Sustained.

Q Did you read this book, Mr. Cosell?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Cosell, I believe you stated to Mr. Sharfman that you asked questions of Mr. Perez based on the public printed matter you had read; is that correct?

A No, sir.

MR. ELDRIDGE: That is objectionable.

THE COURT: The witness didn't say anything of the kind. He said the conversation followed what had already appeared in the press reporting of what Mr. Perez had said. It wasn't different.

MR. SULLIVAN: May we read the question and the answer right before he said that? Maybe I heard it wrong, but that is what I believe he said.

THE COURT: Maybe you could ask him another question. Ask him what he said.

What is your version of what you said on that subject?

THE WITNESS: At which time, your Honor?

Q When Mr. Sharfman was questioning you just now. The question is: Did you ever say in words or substance that you questioned Ali during the Wepner-Ali interview based on what was a controversial subject and based on what you had read in the public print about that matter?

MR. ELDRIDGE: Objection.

THE COURT: I think we'll have the record read here.

(Record read.)

Q Am I not correct, Mr. Cosell, that you told Mr. Sharfman that you based your questions on two things, the public print matter at this time and the postion Perez established in the phone call?

MR. ELDRIDGE: Objection.

THE COURT: We're not concerned in this case with whether you are correct or not. We are concerned with what the fact is.

Will you please phrase your question so as to elicit answers from the witness instead of indicating your correctness, if any.

Q I show you Plaintiff's Exhibit 23 for Identification, Mr. Cosell, and ask you if that is one of the articles that you had read before the interview and upon which you based some of your questions?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Overruled.

A Could you read this aloud to me?

Q I'll be glad to.

A Thank you.

MR. SHARFMAN: I would like to see what is in

this article.

THE COURT: He gave you the exhibit number.

The witness has read it.

A What is your question, again?

Q My question is: Is that one of the articles that you had read before the interview and upon which you based some of your questions?

A No.

Q I show you Plaintiff's Exhibit 18 for Identification, Mr. Cosell, and I ask you if that is one of the articles that you had read prior to the interview and upon which you based your questions in the interview?

MR. ELDRIDGE: Objection.

THE COURT: Overruled.

A No.

Q Mr. Cosell, do you remember of your own recollection right now any of the articles, the printed matter that you had read and upon which you based some of your questions?

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q Which articles?

A The news reports of the press conference the

morning following the fight. The news reports the morning following the fight of the press conference held after the fight in the Cleveland Plain Dealer, the Los Angeles Times, the New York Times and the New York Post.

THE COURT: Who held that press conference?

THE WITNESS: It was the fighters --

THE COURT: I want you to identify the person who gave the press conference. Who was being questioned?

THE WITNESS: I was not -- the two fighters. It is an automatic procedure, your Honor, after a heavyweight championship fight.

THE COURT: You talked about a press conference that took place the day after the fight.

THE WITNESS: No, sir, this was immediate, the night of the fight, immediately thereafter.

THE COURT: Who was being interviewed by the press?

THE WITNESS: The two fighters, Ali and Wepner.

THE COURT: All right.

Q I show you Plaintiff's Exhibit 29 for Identification, Mr. Cosell, and ask you if that is one of the articles that you had read?

A I can tell you now, no. This is the New York Daily News.

Q Mr. Cosell, would you look at the top of that page and see if it is not really the New York Post.

A You are right, I apologize, it is the Post. Yes, this was one of the articles I read.

MR. SULLIVAN: I offer it in evidence, your Honor.

MR. ELDRIDGE: Objection by ABC.

MR. SHARFMAN: Objection.

THE COURT: Let me see it.

MR. SULLIVAN: Just this part.

MR. SHARFMAN: I'll withdraw my objection, your Honor.

THE COURT: The article is received. The objection of ABC that the article is incomplete is overruled. I seem to find a start and a period at the end of the article.

MR. SHARFMAN: Our copy does not have such a period in it.

THE COURT: This one ends and says:

"Maybe Tony Perez should have borrowed the line."

This one is allowed. Maybe it is a different edition.

MR. ELDRIDGE: May I see that one?

MR. SHARFMAN: We are looking at what was marked Plaintiff's Exhibit 29.

THE COURT: Don't get into a controversy. This has been offered and I have received it.

xx (Plaintiff's Exhibit 29 received in Evidence.)

MR. SHARFMAN: Note my objection to this article. Please note my objection to this.

THE COURT: Yes. It is overruled. If you have an amplification of the article that appeared in a later edition, you are privileged to present it, or an earlier edition, whichever the case may be.

(Continued on next page.)

MR. SULLIVAN: May I read it at this time, your Honor?

THE COURT: Yes. Let's move along rapidly.

MR. SULLIVAN: Yes, your Honor. In headlines, "Ali On Perez: 'A Dirty Dog' by Lester Bromberg. Referee Tony Perez emerged from last night's Muhammed Ali-Chuck Wepner fight --"

THE COURT: Wait a minute. If you want to read it, it ought to be articulate so we understand it.

MR. SULLIVAN: I apologize, your Honor.

THE COURT: The reporter is taking it down, so please try to express yourself.

MR. SULLIVAN: "Referee Tony Perez emerged from last night's Muhammed Ali-Chuck Wepner fight with a questionable report card.

"Ali was Tony's severest critic, charging him with permitting Wepner to launch a series of rabbit punches in the first round, he said, 'He let that man bang me on the head, I had to give it back to him. I don't want that referee in the same ring with me again. He is a dirty referee, he's a dirty dog.'

"The New York-based official is remembered for having committed a goof in the second Ali-Frazier fight, which worked to Ali's disadvantage.

"Mistakenly believing he heard the bell, Perez stopped the action in the second round right after Ali had stung Frazier. This respite probably saved Joe from a knockdown. At the Garden last night, there were many who thought he used poor judgment in stopping the fight with only 19 seconds to go.

"What was the point in stopping it with so little time to go? asked Featherweight Champion Sandy Addler who worked with George Foreman at Zaire.

"Wepner deserved the chance to go 15. He's an old school fighter, he has his price.

"Haven't they got a rule on the books for three knockdowns before a compulsory knockout? asked Duane Bobbick, the young heavyweight?

"Anybody fighting for a title should get it and Wepner didn't.

"Many in the audience didn't see the punch which dropped Ali in the 9th round.

"One observer insisted he saw Wepner throw a right under the heart which caused Ali to trip over Wepner's foot. It wasn't a great punch, but it was enough," he said.

"Curiously, Perez didn't help his cause in discussing the knockdown. He merely said: 'I ruled it a knockdown.' without enumerating the punch.

"Maybe the film highlights to be shown Saturday on Wide World of Sports will help clear the air. "

In black print, "Only three others."

"Ali was irritated by the knockdown, which he claimed was caused by a misup of legs. Knockdowns don't happen often in his 15 year career.

"The writer can recall only three others, against Sonny Banks in 1961 at the old Garden, Henry Cooper in 1963 in London, and the first fight with Frazier in 1971.

"There is another odd aspect to the ending of the fight. It was the first heavyweight title fight in Cleveland since 1931 when Max Schmelling stopped young Stribling in the 15th and last round with a minute to go. And there was a famous epilogue. Referee George Blake quizzed on the point of time, said: 'I'm a referee, not a timekeeper.' Maybe Tony Perez should have borrowed the line."

Thank you, Mr. Cosell,no further questions.

MR. SHARFMAN: We object to that reading, your Honor.

THE COURT: Is there anything else?

MR. SHARFMAN: Just one or two questions on recross, your Honor.

RECROSS EXAMINATION

BY MR. SHARFMAN:

Q Mr. Cosell, does it refresh your recollection -- withdrawn.

Do you recall, sir, that the press conference following the Ali-Wepner fight in Cleveland, the first press conference was between Mr. Perez, the referee of the fight, and reporters from all over the world prior to any interviewing by the press of the fighters? Do you recall that, sir?

A I was not there.

Q Would it refresh your recollection, sir, from the reading you did in preparation for your program, your interview, if I told you that Mr. Perez recall quite clearly and vividly that he spoke to the assembled reporters at a press conference before any fighter had been interviewed following that fight?

A I don't recollect that.

Q You have no recollection of that?

A I was not there.

MR. SHARFMAN: Thank you, sir, no further questions.

THE COURT: You are not saying it didn't happen that way?

THE WITNESS: I am not saying that at all, your

Honor.

THE COURT: You just don't know.

Q It doesn't refresh your recollection that Mr. Perez was quite clear that he spoke --

THE COURT: Please, the jury's recollection can be refreshed later on that subject, if necessary.

THE COURT: Who sent this note up?

MR. SHARFMAN: I believe I did, your Honor.

THE COURT: I don't understand this. I don't understand what you have in mind. You better write it out -- write something else on here.

MR. SHARFMAN: Yes.

THE COURT: Maybe I can save you a little time. Are you requesting that Mr. Cosell be available for the defendant's side of the case?

MR. SHARFMAN: Yes, sir.

THE COURT: Is there any problem about that? Do you have some sports problems?

THE WITNESS: If he is talking about Monday, sir, yes. I have Monday night football.

THE COURT: When did you have in mind for Mr. Cosell, was that on Monday?

MR. SHARFMAN: Well, sir, it depends on how long the plaintiff's case takes.

THE COURT: I don't want to get into a hassle with you --

MR. SHARFMAN: I believe it would be Monday or Tuesday, sir.

THE COURT: Let me talk to the witness privately here about his availability.

(Discussion off the record.)

THE COURT: The witness, Mr. Cosell,will be available, if needed, the first thing Tuesday morning.

MR. SHARFMAN: Thank you, your Honor.

THE COURT: Thank you, Mr. Cosell, you are excused.

THE WITNESS: Thank you very much, your Honor.

(Witness excused.)

MR. SULLIVAN: Your Honor, I have a witness who I will only ask two questions, perhaps we could -- two basic questions, just a little foundation first. I forgot that, I'm sorry.

THE COURT: Put him on now.

MR. SULLIVAN: Mr. Farley.

J A M E S A. F A R L E Y, J R.,

called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Farley, sir, what is your position today in boxing?

A Chairman of the New York State Athletic Commission.

Q For how long have you been Chairman of that Commission?

A Since August of last year.

Q What is, sir, Tony Perez' reputation in the community as a referee?

A To the best of my knowledge, a good and capable referee.

Q To your personal knowledge, sir, has Muhammed Ali ever objected to Tony Perez refereeing the fight before it happened?

A No.

MR. SULLIVAN: No other question.

MR. SHARFMAN: Thank you, Mr. Farley, we have no questions.

THE COURT: Thank you very much, you are excused.

(Witness excused.)

THE COURT: Next witness.

MR. SULLIVAN: I would like to read from that portion of the book, your Honor, page 394.

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THE COURT: The jury will understand that there are some things in the book that I am allowing to be read, and other things that have no concern with this case and they are not being allowed to be read.

The paragraphs that are being read here now may be placed before you with consideration to the extent that any consideration is deserved.

MR. SHARFMAN: Just note my objection to relevance, your Honor.

THE COURT: Overruled.

MR. ELDRIDGE: Objection, your Honor.

THE COURT: Overruled.

MR. SULLIVAN: (Reading)

"Yes. I was saving it for my second fight with Frazier coming up next. But while training for Frazier, the pain was almost unbearable. Even to be hit on the hands by sparring partners when boxing blows was torture. At first it was only the right hand, but them both hands. Herbert had asked me to fly into Boston to see the famous hand specialist Dr. Richard Smith at Massachusetts Hospital. I knew my days as a fighter were numbered, but the treatment they prescribed seemed too costly, complex and log.

Besides, when I got back to camp the pain had

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eased. I began tearing into sparring partners and the heavy bag to make up for lost time. Then suddenly it was back again and worse.

"'Sparring partners now hit you with blows a baby could get away from,' Bundini lamented. 'Champ, if there is something wrong, let's leave boxing. We can make it somewhere else. Frazier is like a tank,' Blood said. 'You need anti-tank guns, Champ. You ain't got no anti-tank guns now. They broke.'

"It was less than three weeks before I was scheduled to go in the ring against Frazier. I wanted the return match with Joe Frazier, not only to wipe out the first decision against me, but because Frazier was probably the most ruthless, aggressive and competitive heavyweight in modern times. I had to whip Frazier to establish any claim to a title fight. Then, too, a deep, personal fued had grown up between us. Our fights were not just for money but for our lives. Whatever would happen to me in the future, my body was now at its peak. I had everything to do to master Frazier or any other fighter.

"Herbert Muhammed was on the phone. 'If the hands are no better in two weeks, we are calling the Garden to cancel the fight. It's better we bow out of boxing now than risk any injury. Nothing in boxing is

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worth that.'

"'I think they're getting better,' I said, 'They will be all right.'

"'I hear what you say. I know why you say it, Herbert answered, 'but just the same ...'

"Herbert had assigned C.B. to report on my hands early in training, not only during the Frazier training, but during my training for Norton and Quarry. Now they had Blood and Bundini watching me for signs that might indicate danger."

On page 396 right in the middle:

"But I knew I have to have help, so when Lou Beltrami, a friend since I moved up to the mountains, asked me to go to a nearby town to see his personal physician, Dr. Peter Greco, I agreed.

"'By the condition of your hands now,' the doctor said, 'I would say you should cancel the fight.'

"I felt hostile. 'That's a judgment for me to make,' I said. All I want to know is if there is anything that can be done to help me before I fight Frazier.'

"He said he would try. Almost every day he came to camp to give me cortisone and hot wax treatments. I doubht a hot wax applicator, and all through the day and evening I doused my hands. Slowly they seemed to

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improve."

MR. SULLIVAN: Your Honor, may we break for lunch?

THE COURT: No, let's go ahead.

MR. SHARFMAN: Would this be an appropriate time for me to publish to the jury the document which is now admitted in evidence that was identified by Mr. Ali? I would just like to get it into evidence.

THE COURT: No. Call your next witness.

MR. SULLIVAN: I would like to recall Mr. Perez, your Honor, for three questions.

THE COURT: Who?

MR. SULLIVAN: Mr. Perez who has been on the stand for three questions.

MR. SHARFMAN: Objection, your Honor.

MR. ELDRIDGE: Objection.

THE COURT: Overruled.

A N T H O N Y P E R E Z, recalled by the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Perez, on the day before the Wepner fight at the weigh-in, when you say you saw Muhammed Ali, did you --

THE COURT: Now, please, I have asked you not

to repeat what you think is testimony.

That has a distracting influence and it becomes necessary to make corrections to your statements if any are required. That's not your function.

Your function is to ask questions, and not put it to the jury to correct your statements.

Q I show you Plaintiff's Exhibit 37 for identification, Mr. Perez.

MR. SHARFMAN: Wasn't this gone into previously on direct examination?

THE COURT: I don't know. I haven't heard a question. He is entitled to a question.

Q I ask you if that is not a fair and accurate representation --

THE COURT: Why don't you ask him what it is, he is your witness.

Q What is it, Mr. Perez?

A It is a picture.

Q Who took the picture?

A I took this picture.

Q When did you take the picture?

A The day before the Wepner fight at the weigh-in ceremony, the day before the fight.

Q Is that a fair and accurate representation of the picture you took?

A Yes, sir.

Q Is it a fair and accurate representation of what you saw while you were taking the picture?

A Yes, sir.

MR. SULLIVAN: I offer it in evidence.

MR. SHARFMAN: Objection, your Honor.

THE COURT: Let's see it.

THE COURT: Sustained. Mark it for identification.

(Plaintiff's Exhibit 37 marked for identification.)

Q Did you say anything to Muhammed Ali the day of the weigh-in?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Did you have a conversation with Mr. Ali on the day of the weigh-in or the day before the weigh-in whichever it was?

A Yes, sir.

Q What day was it?

A The day of the weigh-in, one day before the fight.

Q That was March 23, 1975?

A Yes, sir.

Q You knew at that time that you were going to be the referee?

A I knew that I had a very big chance to become

the referee. I was not appointed officially yet.

Q What, if anything, did Muhammed Ali say to you in that conversation?

MR. SHARFMAN: Objection.

MR. ELDRIDGE: Objection.

THE COURT: Overruled.

A He said hello to me, said"hello Tony, how are you."

Q Did he say anything else?

A I don't remember. Oh, he said -- my recollection ishe said, "Hey, Tony, how are you, I hear you are refereeing."

I say, "I don't know."

Q Did he say anything else to you?

A Yes. I snapped a picture --

THE COURT: Now, please --

Q Just did he say anything else, Mr. Perez.

THE COURT: Don't try to get something in that I want to keep out.

A He said to me, "I am taking the girl away from you."

THE COURT: Strike out that statement.

MR. SULLIVAN: No further questions.

THE COURT: I understand that there are no further questions, but that question was asked with

the knowledge that I had ruled out the previous exhibit.

Is there any cross examination here?

MR. SHARFMAN: Just one question, your Honor.

RECROSS EXAMINATION

BY MR. SHARFMAN:

Q When is it you remembered, Mr. Perez, about Mr. Ali saying to you, "I hear you are refereeing the fight"?

A I don't understand the question.

Q When did you recall it, sir, when you testified before this jury earlier in this case you were asked did you speak with Mr. Ali at the weigh-in, and you answered, "We crossed by and said a couple of words like hello, how are you, something like that."

THE COURT: Do you remember being questioned, giving that answer in this trial on your cross examination?

THE WITNESS: I don't remember. There were some questions, I don't remember.

THE COURT: What page of the transcript of this trial are you reading from?

MR. SHARFMAN: Your Honor, you will forgive me --

MR. SULLIVAN: I will stipulate he said that, your Honor.

THE COURT: I am not concerned with a stipulation.

MR. SHARFMAN: One moment, please, your Honor.

Page 75, your Honor.

THE COURT: It is page 75 of the transcript of this trial.

MR. SHARFMAN: Yes, sir.

THE COURT: Read the questions and answers given by the witness at that time on what date, the date is on the front of the paper.

MR. SHARFMAN: Yes, sir, October 12, 1976. In this courtroom before this jury:

"Q Did you speak with Muhammed Ali at the weigh-in?

"A We crossed by and said a couple of words like 'Hello, how are you.' Something like that.

MR. SHARFMAN: No further questions, thank you.

MR. SULLIVAN: No questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. SULLIVAN: I 'd like to read, your Honor, from page 87, line 12 of the deposition of Muhammed Ali taken in this case.

MR. SHARFMAN: Which deposition did you say?

MR. SULLIVAN: The second one.

"Q When you taped the interview with Mr. Cosell on March 28, 1975, did you know that the interview would be

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broadcast nationally on March 29, 1975 on Wide World of Sports?

"A I don't know this date exactly when they would show it, but I knew it would be national."

Page 92, line 8 of the same deposition:

"Q You said earlier today and correct me if that is not so, that there was a loudspeaker system at this place?

"A Yes, when he started his press conference, about half of it I heard from outside, and I came in while he was ending."

From the first deposition of Muhammed Ali, page 113, line 21:

"Q When did he tell you this in terms?

"A The day we found out we were going to fight him, about five, six weeks before the fight. And every day in training we trained for this. I had my sparring partners throw kidney, rabbit punches in training daily to get ready for it in case it was allowed."

Page 117, same EBT, line 24:

"Q Were you aware at any time that Mr. Radamacher was to be the referee for the Wepner fight?

"A Yes."

That's all for that for now.

Your Honor, I believe at this point it is

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plaintiff's intention to rest. I would request that we break for the luncheon recess, that I could think if there is any small point I might have forgotten, but at the time it is my intention to rest.

THE COURT: All right, ladies and gentlemen, we will take a recess now until 2:10.

THE CLERK: Please remain seated while the jurors are leaving the courtroom.

(Jurors excused.)

(Luncheon recess.)

Perez

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Bl
p.m.

AFTERNOON SESSION

2:15 p.m.

THE COURT: This motion that you have passed up here is meaningless. You will have to tell me what it is that you are specifically requesting me to do that is different from the case as presented in the pleadings.

Also show your memorandum to the other side before it is passed up here.

MR. SULLIVAN: Yes, your Honor.

(Pause)

THE COURT: In view of the comprehensive pretrial order that was stipulated to by the parties, the application of the plaintiff to now change the pleadings in any respect is denied.

The application is marked Court Exhibit 18.

xx (Court Exhibit 18 marked for Identification.)

MR. SULLIVAN: Plaintiff rests, your Honor.

THE COURT: The motions may be deemed made and decision is reserved.

MR. SHARFMAN: Thank you, your Honor.

I call Mr. James Jacobs to the stand, please.

J A M E S L. J A C O B S, called as a witness on behalf of the defendant Muhammed Ali, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHARFMAN:

Q Mr. Jacobs, would you tell the Court and jury your connection with the sport of boxing, sir?

A Our company, The Big Fights, Incorporated, own and controls a majority of all the fight films in the world from 1894 to 1976.

Q About how many filsm are there in that collection?

A In excess of 16,000.

Q Have you personally reviewed all 16,000 of those films?

A I have not only reviewed them, but I know them very well, intimately.

Q What is the business of The Big Fights, Inc.?

A We acquire the rights to championship fights and then exploit the film, the reproduction, in television, theaters throughout the world.

Q In addition to your work for Big Fights, Inc., do you have any other connection with the sport of boxing or the boxing business?

A Yes. I'm a licensed manager in the State of New York and the State of Pennsylvania.

Q Is that as a manager of professional boxers, sir?

A Yes, a manager of professional fighters.

Q Do you at this time manage any professional fighters?

A Yes.

Q Besides that, sir, have you ever been a boxer?

A In the service during the Korean War I won the light heavyweight championship of the army.

Q Have you ever appeared on television as a boxing commentator?

A Yes, for two years on Channel 4, a little more than two years, I believe, I was referred to as the resident boxing expert and would be invited before every major fight to come on, to go on Channel 4 and to give my opinions of the fight and to attempt to predict a winner.

Q Were you successful in predicting winners in those fights?

A I was on the show I believe 36 times and I was wrong twice on Durand-Buchanan and Foreman-Frazier.

Q Just a further item of your background. Do you have, aside from being the light heavyweight champion of the

army, any other athletic championships?

A Yes, many, but I guess the one that would be most prominent is that I won 19 national championships in the sport of four-wall handball and the world championship in four-wall handball.

Q Did you see the fight between Muhammed Ali and Joe Frazier in Madison Square Garden the second time Ali and Frazier fought?

A Yes, I was in the second row press when Ali fought Frazier in the Garden.

Q Do you recall the second round of that fight?

A Vividly, yes.

Q Do you recall who was refereeing that fight?

A I certainly do.

Q Who was that, sir?

A Tony Perez.

Q Do you recall when Mr. Perez called the second round of that fight over?

A Very well. Yes, I do.

Q And you were in the second row press, were you not?

A Yes.

Q Did you hear a bell ring?

A No, I did not hear a bell ring.

Q Did you see the lights in the poles go on?

A The lights in the poles did not go on.

Q In your judgment, was Joe Frazier in trouble at that point in time?

A Joe Frazier was in very serious trouble at that point in Round 2 and as the fight turned out it was the most serious trouble that he had in that 12- round fight.

Q Do you recall Muhammed Ali hitting Joe Frazier with a right hand in that round?

A Yes, I do, but -- a conclusive punch, but there were many more than the right hand. Frazier --

Q You say a conclusive punch?

A A conclusive punch, but at that point in the 2nd round Frazier, in my opinion, was in desperate trouble.

THE COURT: What do you mean by "trouble"?

THE WITNESS: Sir, trouble is when you are on the verge of being knocked down.

Q And perhaps knocked out?

A After a knockdown usually in most of the fights, unless -- it is hard to determine whether when a fighter gets knocked down, whether he is going to be knocked out. Joe Frazier at that point was on the verge, in my opinion, of being knocked down, and that is when a fighter is in serious trouble, especially against a professional like Muhammad Ali.

Q Did you hear any cowbell ringing when Mr. Perez stepped between the fighters, Mr. Jacobs?

A A cowbell?

Q Yes, sir.

A No.

Q Did you see any flashes that looked like the lights in the poles bright in the ring in Madison Square Garden?

A Extemely bright. It would be virtually impossible to be inside the ring faced in any direction and not see one, two or three of them, depending upon your peripheral vision. They are extremely bright.

Q Did you see the Ali-Wepner fight?

A I was not there. I saw it live as it came over television. We were taping, so I saw the telecast as it occurred.

Q Since that time, that is, since the live telecast, the live closed circuit telecast -- I take it that is the telecast you are referring to.

A The live telecast, yes.

Q -- since that time, have you viewed that fight again?

A Dozens and dozens of times. I am very familiar with the Ali-Wepner fight.

Q Is that in connection with your business, sir?

A In connection with my business we had edited it and picked out the instrumental rounds that would be most likely to represent what took place in the fight.

B2 Q Have you seen Mr. Perez referee other matches, boxing matches, besides the Ali-Wepner and Frazier-Ali fights?

A Many times. I have seen Mr. Perez referee many times, championship fights.

Q And what is your opinion of his abilities and competence as a referee, other than the two fights we have been discussing, Ali-Frazier and Ali-Wepner.

A I my opinion, Tony Perez has been a perfect referee. I always thought that and still do, that Tony Perez, LoBianco and Mercante are the three finest referees I have ever seen.

Q What is your opinion of Referee Perez' performance in the Ali-Wepner fight?

A At the time I saw the fight and in reviewing it I thought his performance was outrageous.

Q Was it in keeping with his performance in the prior fights you had seen him referee, other than the Frazier-Ali fight?

A It was completely incompatible with the other performances in the ring that I have seen Perez work.

Referees, like fighters, have styles. If I were to see any of my films in black and white and were not permitted to see the fighters or the referee, I can immediately identify the referee if he was in shadow by his style.

Perez, being a perfect referee and never making a mistake in a fight that I had seen, his style is as identifiable as if I saw Muhammed Ali, a Joe Louis or Jack Dempsey. I would know them in two second by observing, and in black and white.

Q Was his style in the Ali-Wepner fight in keeping with his regular style that you have just described?

A In the Ali-Frazier fight?

Q Ali-Wepner.

A In the Ali-Wepner fight, yes, sir. It was a complete and radical departure from anything he had ever done before.

Q I believe you used the word outrageous; is that right, sir?

A Yes, that is the way I feel.

Q Did you believe that when you first saw the Ali-Wepner fight on the live telecast?

A After I saw Round 1, and being very familiar with Tony Perez as a referee, I couldn't understand what I was observing after seeing Round 1. After I saw Round 2

I thought that Muhammed Ali was in serious trouble.

Q Serous trouble because of the referee?

A Preciesly.

Q By the way, sir, are you familiar with the origin of the phrase rabbit punches?

A Certainly.

Q What is it, sir?

A A rabbit punch is a punch in this area, to the back of the head, the side and back of the head. It got its origin because that is how they kill rabbits. They hold them up by their necks and hit the rabbits in the back of the head. That is how it got its name, rabbit punch.

MR. SHARFMAN: Thank you, sir. I have no further questions, Mr. Jacobs.

CROSS-EXAMINATION

BY MR. SULLIVAN:

Q Mr. Jacobs, was, in your opinion, Joe Frazier on the verge of being knocked out at the end of that second round when Mr. Perez stopped the fight?

A I don't believe that anybody, any authority -- you can't determine when a fighter is going to be knocked out for a reason and that is because it takes into consideration intestinal fortitude, courage and heart. But you can observe physically when a fighter is going to be knocked down

and in my opinion Joe Frazier was about to be knocked down.

Q You say intestinal fortitude, courage and heart. One does take into consideration, wouldn't it be fair to say that when it comes to heavyweight fighters there are very few who have more intestinal fortitude, courage and heart than Joe Frazier?

A Joe Frazier and Muhammed Ali have both demonstrated those qualities.

Q Do I understand you to say that for the last -- let's limit it to about 10 years. Have you reviewed films of every fight Joe Frazier has ever fought?

A Well, when a fighter is in the early stages of his professional career no one knows that he's going to be a Joe Frazier. How many people knew that Cassius Clay was going to be Muhammed Ali?

Q How long has Frazier been a big name in fighting?

A Frazier won the Olympic title in 1964 and turned professional.

Q Since 1964, have you seen all of his fights?

A I have seen a majority of Joe Frazier's professional fights. Some I haven't seen because they weren't photographed.

Q Do you know, sir, how many times since 1964 Joe Frazier has been knocked out?

A Yes.

Q How many times?

A Joe Frazier has been knocked out by George Foreman in Jamaica and he was stopped by George Foreman in Nassau Coliseum in the second fight about five months ago.

THE COURT: What does the word stop mean? Is that a technical word?

THE WITNESS: Yes, your Honor. It is when the referee --

THE COURT: One is a physical knockout and one is where --

THE WITNESS: In both fights the referee properly and compassionately stopped the fight.

Q In the first fight when he fought Foreman, what round was that fight stopped in?

A The first Foreman-Frazier fight was stopped in the 2nd round.

Q How many times had Frazier been knocked to the canvass in the second round?

A In the second round of that fight he was knocked to the canvass three times.

Q Was there a three-knockdown rule in that right?

A No, there was no agreement.

Q Did he get up after the third time he was knocked

out?

A He got up.

Q He got up but the referee stopped the fight?

A Mercante stopped thefight.

Q The second Foreman-Frazier fight, how many times had Frazier been on the canvass?

A He was knocked to the canvass twice.

Q Did he get up after the second time?

A He did.

Q Did the referee then stop the fight?

A He did.

Q How many second were left in the Frazier-Ali fight when Mr. Perez stopped the fight?

A The precise, the exact amount of second -- perhaps it was established before I got here. It was towards the end of the round, but if you would -- the exact to the second, I could not tell you, unless it has been established here.

Q Assume, sir, that it was with 20 second or less to go in the round.

How many times could Joe Frazier have been knocked down in that round from that point on?

A Twice.

B3 Q It is impossible for him to be knocked down more

than twice; is that correct?

MR. SHARFMAN: Objection.

THE COURT: I don't know that anything is impossible unless time has run out.

A It is not impossible at all. He could have been knocked down five times. If you want to take into consideration -- and it is unlikely -- since you used the word impossible, if a fighter is knocked down he has the perogative of getting up at the count of two and being knocked down and getting up and being knocked down. However, professionals, which Joe Frazier is, he would probably not immediately get up upon being down.

Q Was there any mandatory eight-count in that fight?

A There are no mandatory eight counts in championship fights.

Let me say this: I believe if there was a mandatory eight-count in a championship fight, I believe it has to be established before the fight. In other words, different states have different rulings, and the referee will inform the press and the fighters that there is a three-knockdown rule or a mandatory eight-count so at least it has been established before the fight starts.

Q Except for the referee stopping the fight

after Frazier has already got up and is on his feet, has Joe Frazier since 1964 ever been knocked out?

A Joe Frazier has never been knocked out.

Q After Muhammed Ali hit Joe Frazier with that right in the 2nd round and put him in trouble, did Frazier throw any punches back?

A It would depend on which right you are referring to. I'm very familiar with the fight.

Q The right where he set him up with two lefts and then came across with the right and Frazier bounced back. Is that the right hand you remember in that fight?

A Yes, very well.

Q After he hit him with that right did Frazier throw any more punches?

A What happens in a fight, and because Frazier is competitive this is quite normal, is that when a champion is hit or when a competitive is hit, being competitive he attempts to retaliate. What happened is those punches made Joe Frazier totally ineffective. From that point on Frazier's efforts were neutralized by the fact that Muhammed Ali had connected and stunned Joe Frazier. Frazier, being competitive, would always attempt to fight back, but he was completely neutralized.

Q Isn't it a fact, sir, that after Ali hit Frazier

with that right and Frazier went back on his feet, he then threw a very strong left punch that just missed Ali?

A Well, you see, you have to understand that something --

Q Just a second.

A Well, no, that is not accurate.

Q Is it a fact?

A No.

Q What happened

A When you observed Joe Frazier throwing a punch, and to you it appears to be a vicious punch with bad intentions behind it. A man like Muhammed Ali would not have the same attitude towards that punch because when Frazier was hurt Ali instinctively or any fighter, any professional fighter instinctively knows it, so consequently if Frazier throws a punch out of desperation, a fighter like Ali will take the step back, avoid the punch, and then move in to strike once again.

It is true that a person who is not sophisticated that Frazier's punch might look vicious to you, but actually it is isn't that at all.

Q To someone who is sophisticated, sir, in your opinion was Ali having any trouble with his hands in that Frazier fight?

A Well, I was in the second row press. I can observe what takes place in the ring, but I cannot, I cannot tell if when a man strikes a punch if he's feeling pain. The nature of being professional is that if a man feels pain or is hurt he would never reveal it. That is why he's a professional.

Q Can't someone as experienced as yourself tell when Ali is hitting hard Ali punches and when the sting isn't there?

A You mean could I determine --

Q Yes. With all your expertise you couldn't do that?

A In my opinion there is nobody in the world who can watch a professional fighter throw a punch and determine whether he feels pain in his hands, unless he gives some visual indication, wince or something.

Q In my opinion, sir, in watching the Ali-Frazier fight, fight two in the Garden, did Perez do a good job in that fight?

A I thought that Tony Perez, outside of the 2nd round, I thought that he did a competent job, and after viewing the 2nd round initially my reaction was that he was stepping in to stop the fight. I thought he was stopping the fight prematurely.

After that I thought that Perez did a competent job.

Q In your opinion was Ali holding Frazier during that fight?

A In my opinion, the phrase that you use, holding. or clinching, or tying up, there is a fine line.

For example, a fighter like Muhammed Ali who is a boxer or a Gene Tunney or any great boxer, what he will do and what he learns to do, because this is till based on self-preservation -- they will learn to tie up or effectively clinch, but what determines whether a fighter is holding, to answer your question, is the referee. If he interprets that a fighter is holding he will immediately alert the fighter and warn the fighter and make it evident to the two judges who are judging the fight with him -- he will first warn the fighter for holding, and then he will tell the judges that "I am warning the fighter that he is holding."

If, on the other hand, it is the opinion of the referee that no -- that he is not holding, that he is effectively tying-up the fighter, in that event he will not warn the fighter and thus the judges will observe what they are seeing and judge accordingly.

MR. SULLIVAN: I ask that the answer be stricken. I asked a simple question and I get a book.

THE COURT: I think you got an answer to your

question. Denied.

B4 Q Mr. Jacobs, have you ever seen a referee by mistake stop a fight before the round is over?

A I have never seen in 16,000 fights that -- I have never seen a referee stop a fight prematurely. I have seen judges ring the bell incorrectly and also I have seen fights that go -- rounds that go two minutes being stopped one minute prematurely by the man who is called the time-keeper, but usually that judgment is always left to the time-keeper who rings the bell. I have seen that, but not a a referee.

Q Never?

A I have not seen it.

Q Have you seen it in any films?

A No, that is what I meant.

Q How many times do they ring the bell at the end of the round?

A It depends on the knockdown -- on the bell keeper, the timekeeper. I have been to many fights where they ring it loud and clear. I mean, it is a loud, echoing noise. It cannot be misinterpreted or misunderstood. If the crowds are yelling, a competent timekeeper will ring two or three times.

MR. SULLIVAN: I move to strike that part of the answer, "cannot be misinterpreted."

THE COURT: Motion denied.

Q Forgetting about loud and clear for a second, isn't it a fact that sometimes they ring the bell once, sometimes the timekeeper will ring three times, sometimes they will ring it twice?

A Yes, I have heard the bell ring once, twice and three times.

Q You were at the Frazier-Ali fight in the 2nd round?

A I was in the second row press.

Q Was there a lot of noise there?

A Was there a lot of noise at the fight? Well, at a fight there is always noise. There is never silence because you have two factions.

(Continued on next page.)

Q Isn't the noise very loud?

A Depending on what happens in the ring, the noise can be loud or it can be lower. If it is exciting, the crowd becomes enthused.

Q When Ali hit Frazier the time you thought Frazier was close to a knockdown, that must have been exciting, is that correct?

A It was exciting.

Q In fact, I believe you told us that that was the only time Frazier was in trouble the whole fight?

A In my opinion, after seeing the 12 rounds 30 or 40 times, it is my opinion that that was the only time he was in desperate trouble.

Q Would it be fair to say that moment was about the most exciting moment in the whole fight?

A In retrospect, I would say that was the most exciting point of that fight.

Q Isn't it a fact, sir, that many fight fans, during the course of a fight, whistle?

A I would say that-- there might be some fight fans that whistle. Usually, they cheer and yell as encouragement to their fighter.

Q Isn't it a fact that there are fight fans who do whistle during the course of a fight?

A I would have to say that I have heard whistles in the arena, but, however, it would only be if the people who were yelling or cheering were quiet. A whistle can't drown out a cheer or a yell.

Q Are there some people who can whistle louder than others?

MR. SHARFMAN: Objection, your Honor.

THE COURT: Overruled.

A Yes, I am sure there are people who whistle louder than others.

Q In your opinion, someone whistled with a shrill whistle three times, and he was close to the ring on the other side than where you were.

Is it possible that Mr. Perez might have thought that was the bell?

A No.

Q It is not possible?

A No, for many reasons my video tape didn't pick it up.

Q It didn't pick it up?

A I have a soundtrack.

Q Where is it located during the fight?

A The soundtrack of the film, if there was anything--

Q No, where was the soundtrack located during

the filmings of the fight?

A What?

Q Where is the microphone?

A You have overhead mikes.

Q Overhead?

A Yes.

You have mkes that pick up everything at ringside. They are called overhead mikes. They are hot mikes.

Q If your soundtrack didn't pick it up, then it is impossible that Mr. Perez might have thought he heard it?

A I don't like to use the word "impossible," because --

Q Is it possible?

A I would say -- I would answer this way, that anything that remotely sounded like a bell, remotely, would be picked up by the overhead mike. The bell is outlandishly clear, so if a whistle -- if a man could whistle loud enough to make the sound like a bell, that hot mike is going to pick it up.

Q Mr. Jacobs, in your opinion of knowing Mr. Perez' style, being so familiar with his style -- withdrawn.

I'm sorry, I don't remember if I asked this question.

What is Tony Perez' reputation in the

community as a referee?

A Exemplary. He is a fine referee.

Q In your opinion, based on his reputation, and based on what you know about his style and how easily recognizable he is, in your opinion did Tony Perez make a mistake or did he do it on purpose?

A Which fight are we talking about?

Q Ali-Frazier when he stopped the second round.

A At the time I saw the Ali-Frazier fight, I thought that Tony Perez had made a mistake and did not do it on purpose. After seeing the Ali-Wepner fight, I completely changed my opinion about the Frazier fight.

Q What is your opinion now, sir?

A I believe that it was a dishonest performance. I don't believe that anyone, in seeing the 15 rounds of Ali-Wepner and being very familiar with the way Mr. Perez refereed, could conceive that over that period of one hour, that he could ever permit the outlandish fouling, the unbelievable conduct that took place in that ring. He would never permit it. I believe it was a dishonest performance.

Q Do you know any concrete facts other than your opinion of the two fights that would enforce that opinion?

A I only have this opinion, based on what I saw

in the Ali-Wepner fight, and based on the fact of my experience in 16,000 fight films that I have.

In all the fights I have ever seen, I have never seen such an outrageous performance by a referee.

Q We are talking now just in the Ali-Wepner fight, is that right?

A I am talking about the Ali-Wepner fight.

Q But in the Ali-Frazier fight you feel his performance was exemplary, except when he stopped the second round.

A I felt that he had made an honest mistake after the Ali-Frazier fight.

Mr. Perez is not exempt from being human.

Q What do you mean by that?

A He is entitled to make mistakes. He made a mistake, I believed. In the --

MR. SULLIVAN: No further questions.

THE COURT: Anything else?

MR. SHARFMAN: No.

THE COURT: Thank you very much, Mr. Jacobs, you are excused.

(Witness excused.)

THE COURT: Next witness.

MR. SHARFMAN: Your Honor, I just want to be

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sure that this is in evidence.

THE COURT: What is this?

MR. SHARFMAN: Ali 17, M-17. In chambers this morning you said it was in evidence.

THE COURT: Let me see the list there. See if M-17 is in evidence.

This is the item to which the plaintiff says he had no objection.

MR. SHARFMAN: That's correct.

THE COURT: It is therefore, without objection, received. It has been received.

MR. SHARFMAN: It has been?

THE COURT: Yes.

You may read it to the jury or such parts of it as you desire.

MR. SHARFMAN: Thank you, sir.

I would now like to publish part of this Exhibit M-17, an article by the well-known columnist Dick Young who testified here yesterday --

THE COURT: Can you see that Mrs. McComb?

MRS. MC COMB: Yes, sir.

THE COURT: Can you see that, sir?

JUROR: Yes.

MR. SHARFMAN: -- printed in the New York Daily

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News of March 25, 1975 which you may recall Mr. Ali testified yesterday he saw and was shown about an hour or so before the taping of the Howard Cosell interview.

Starting with the first paragaph: "I get the strangest feeling I have seen this show before, under another name. It was called, 'A night at the Fights,' starring the Marx Brothers. In it, the managers of the two boxers hold a pre-fight meeting under the ring, with the referee, telling him they will decide when the fight should be stopped.

"That's the second meeting. In the first one, the two managers meet to appoint the referee. It doesn't take much of an imagination to write a comic script like this. All you need do is copy down what has been happening here. You wouldn't believe some of the stuff. Ken Sherwood, an observer, stood off to the side of the weigh-in shaking his head. Sherwood is a member of the State Athletic Commission in New York, where heavyweight title fights used to be held. 'Ref open to all kinds of trouble.'

"'Can you imagine this happening in New York?' he said. 'How can they announce the referee a day before the fight? We'd never permit it. It brings in the gamblers. It leaves the referee open to all kinds

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of trouble.'

"'Hello Tony? This is a friend. I understand you're working the fight tonight. We have made a little bet for you, five big ones at 20-to-1. If Wepner wins, you stand to pick up a hunnert grand. And if he doesn't win, you stand to be picked out of Lake Erie tomorrow.'"

MR. SHARFMAN: That's what I want to publish to the jury, your Honor.

MR. SULLIVAN: May I, for continuity, do the rest?

THE COURT: You can read any part of it that he hasn't read.

MR. SULLIVAN: "That's only part of it. There is the small matter of deciding whether a fighter is bleeding to death or not. Is the referee to do it? Is the ring physician? Pick one.

"Suppose I tell you neither. Suppose I tell you that the fighter's handler is to decide whether his man is fit to go on.

"One of the members of the local commission puts it rather delicately. 'In this fight we are worrying about cuts, because of Wepner's past record,' he said. 'So there will be a little point beyond the doctor this time, in deciding if it is to be stopped.'

"The little point is Al Braverman, manager,

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who has looked down into the faults and crevices of his fighter's eyebrows so long and so often he is on speaking terms with Wepner's optic cavity. 'Nobody knows better than me if one of Chuck's cuts is serious,' says Braverman. 'I'll decide.'

"Evidently the authorities will go along. Ron Delaney, a former fighter in these parts, is a member of the comic-opera commission. He has held the job one week. That's when the Summit County Boxing Commission was formed, a week ago. Summit County didn't need one before.

"During the wei-in, while Ali was fiddling with the balance weights on the scale, actually weighing himself, Ron Delaney, a smallish black man, leaned over to touch the lever.

"'Oh, you's a member of the Commission?' said Ali. 'I thought you was just one of the brothers.'

"The brothers jammed the small platform that formed the TV stage for the mock weigh-in. It was a dream cast for a musical comedy, Redd Foxx, James Brown, Billy Eckstine, Lloyd Price and Pops Staples of the Staple Singers. In the center, of course, was Howard the Hair, the man of honor, the incisive probing reporter, emcee to a farce. His hairpiece, parched by constant exposure to the hot TV lights, sits there atop his head like a pie crust.

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"It is meaningless, of course, to have a weigh-in the day before the fight. As Ali admits, he can scale 223 and a half on TV and climb into the ring 36 hours later at 230, but that is showbiz. There is no Wide World of Hokum on Monday."

In black letters, "Something crooked could happen.

"The weigh-in shennanigans are harmless, but what of the other things? Let us assume Al Braverman is the most benign manager afloat. I said let us assume. Okay, he can be trusted to use the power of fight stoppage wisely and honorably, but what are we starting here/ What precedent are we setting?

"Suppose the next manager is not as honorable as Alvin. Suppose some crooked manager stops a fight that should not be stopped, merely because he had bet a few on the other guy? It was for this reason that New York State and many others abolished the old practice of 'throwing in the towel.'

"Or worse. Suppose some greedy manager, given the right to decide whether this man is badly cut, sees a million buck title slipping away. He fails to stop the fight when it should be stopped, risking his fighter's eyesight. Not that I think for a moment such a thing could ever happen."

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Up top it says, "Young Ideas," and then in large black letters, "Dick Young."

MR. SHARFMAN: Your Honor, Muhammed Ali rests.

THE COURT: Mr. Eldridge?

MR. ELDRIDGE: Your Honor, Defendants ABC and ABC Sports would rest their case, but before doing so, would renew the Rule 41(a) application made earlier in this proceeding.

THE COURT: Decision reserved on that motion.

MR. SHARFMAN: Your Honor, Defendant Ali moves also for directed verdict.

MR. ELDRIDGE: Your Honor, Defendant ABC and ABC Sports would move to dismiss the third party complaint and for a directed verdict with respect to the third party complaint.

THE COURT: Decision reserved on all those motions. Is there any rebuttal?

MR. SULLIVAN: Yes, your Honor.

(Plaintiff's counsel hands note to Judge.)

THE COURT: This procedure is not satisfactory. You may proceed in open court with any proper phase that you may wish to present. Court's Exhibit 19.

(Court's Exhibit 19 marked in evidence.)

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MR.SULLIVAN: I call Mr. Schrier to the stand.

MR. SHARFMAN: I understand Mr. Schrier is an attorney associated with plaintiff's counsel.

THE COURT: That's all right. He is a lawyer.

MR. SULLIVAN: He is not a lawyer.

THE COURT: He has been called to the witness stand, and we will see what he has to say, if anything.

MR. SHARFMAN: I believe, sir, he is --

THE COURT: Whatever responsibility he has to the Court or to the Ethics Commission we will take care of separately after we dispose of the case. In the meantime, let's go on with the case.

R I C H A R D S C H R I E R, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Schrier, by whom are you employed?

A The office of the attorneys for the plaintiff.

THE COURT: What is the name of that office, Lipsig?

THE WITNESS: Lipsig, Napoli, Sullivan, Mollen & Liapakis, P.C.

Q For how long have you been so employed?

A Approximately five and a half years.

Q Do you have any other main professional interests other than being employed by us at the moment?

A I am a student also.

Q A student where?

A At the New York Law School.

Q What year?

A Third year.

Q Have you ever listened to the tape of the second round of the Frazier fight?

A Yes, I have.

Q How many times have you listened to that tape?

MR. SHARFMAN: Your Honor, I object.

THE COURT: Sustained. That's not the best evidence.

MR. SULLIVAN: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. SULLIVAN: Other than motions, your Honor, there is no rebuttal.

THE COURT: The plaintiff rests?

MR. SULLIVAN: Yes, sir, no rebuttal.

THE COURT: All right, ladies and gentlemen of the jury, we will give you a short recess while I

talk to the lawyers about some legal matters. You may go out.

(Jury left courtroom.)

THE COURT: You said you had some motions?

MR. SULLIVAN: Yes, sir.

I move to dismiss the counterclaim of personal injury on the basis that there has been no expert medical proof whatsoever to relate any injuries at all to the -- to any actions by Mr. Perez.

THE COURT: Do you mean to say a man can't testify that he has been hurt without having an expert say so?

MR. SULLIVAN: It is my opinion, sir, that any testimony as to things such as kidney conditions, et cetera, must be tied up with respect to causation by a doctor who comes in and says, with a reasonable degree of medical certainty, these injuries were sustained in the Wepner fight.

THE COURT: Have you got a case that ever said that?

MR. SULLIVAN: I haven't got one with me at the moment, your Honor, but --

THE COURT: According to you, unless you have a doctor in court, you can't sue for personal injuries, is that right?

MR. SULLIVAN: No, your Honor. I can understand

Mr. Ali's testifying to two lumps on the back of his head for a week, but when we start talking about kidney problems over a period of time --

THE COURT: That's a problem that you will have to argue about the injury about, its validity and extent and its compensable nature.

MR. SULLIVAN: I would also move at this time to dismiss the counterclaim that speaks in libel on the basis that Mr. Ali has not proven any statements -- has not given any proof whatsoever of malice on the part of my client under the legal term of malice.

THE COURT: Motion denied.

THE COURT: Do you have anything to say, Mr. Sharfman?

MR. SHARFMAN: I renew my motions, your Honor. If you would like to hear argument on it, I would be glad to give it to you, at this point.

THE COURT: I am interested to know what it is that you think has been established under the contract claim which is the third counterclaim.

MR. SHARFMAN: Yes, sir. The testimony is that Referee Perez was retained to --

THE COURT: Retained by whom?

MR. SHARFMAN: By the promoters, I believe --

THE COURT: But not by Mr. Ali?

MR. SHARFMAN: No, sir.

THE COURT: Do you think that it was a third party beneficiary contract?

MR. SHARFMAN: Yes, sir, I do, I certainly do.

Also, under the -- regarding the contract claim, I do believe he is the third party beneficiary of the referee's undertaking to truly and justly perform, fairly perform his duties.

THE COURT: As a practical matter, why isn't the first conterclaim really a rolled up plea that encompasses the second or third counterclaims under the heading of damages rather than under some legal principle which separates it from the charge that Mr. Ali was maliciously defamed by the referee in the broadcast by the referee of the press interview which took place immediately following the fight.

Why isn't that all really a factor of damages under that first counterclaim and not really subject to separation into a tort or a contract claim apart from the defamation of --

MR. SHARFMAN: Well, sir, as I understand the law; when a man undertakes a job which carries with it duties that run to people, the people to whom those duties run have a right to recover for damages suffered as

a result of the failure of performance of those duties.

THE COURT: That testimony has been so held so far as accountants have been concerned. When they are retained to do an audit, for example, by a corporation on which a member of the public or a stockholder depends, under the Touch Niven case of nearly 50 years ago, I guess it is, that party has a tort claim for impropriety, if any, that exists. That has never been stretched to include fighters, promoters, boxers against referees.

MR. SHARFMAN: I don't think there has ever been a case like this before, sir.

THE COURT: In the Court's judgment, the elements of the second and third counterclaims are essentially rolled up in the quantum of damages, if any, that could be recovered under the first counterclaim.

Accordingly, the Court will dismiss the second and third counterclaims without prejudice to the consideration of the subject matter thereof as elements of the damages, if any, that have been established under the first counterclaim.

What about the claim over against ABC for contribution?

What have you proved there?

The witness on the stand testified -- the witness

Perez testified that he found nothing defamatory in the conduct of Mr. Cosell.

It is true that ABC republished the interview between Cosell and Ali, and a republication is no more privileged than an original publication, unless the doctrine of Times against Sullivan as extended to public figures applies.

How does that enable the defendant, third party plaintiff against ABC, third party defendant, to have contribution.

What did ABC do that involves it in contribution? What breach of duty, owing to Mr. Ali, did it commit.

MR. SHARFMAN: On the contribution claim,as I understand it, that term is on whether ABC and ABC Sports are joined tort feasors together with Mr. Ali. I would strenuously argue and do strenuously argue that Mr. Ali is not a tort feasor, that there was no defamation in this case whatsoever by Mr. Ali or / anyone, to the extent, sir, that --

THE COURT: Are you saying that if he did it, both of them did it together at the same time, the one who was speaking and the one who was publishing?

MR. SHARFMAN: I would go further than that, sir. I would say that when Mr. Cosell, as he does on the tape,

says in response to Mr. Ali, "That's absurd," I believe that establishes that ABC has actual knowledge or a high degree of awareness. However, I don't believe the statement --

THE COURT: What?

MR. SHARFMAN: I don't believe that Mr. Ali's statement which preceded it was defamatory, and I don't believe it was understood by anyone --

THE COURT: Put that aside. You don't have to argue that to me. That's a different subject.

It seems to me that the area that you do express the legal principle involved is the area of joint contribution of joint tort feasors. If there was any tort committed here, they committed it together. If there was no tort committed, they are both free of any claim.

What do you say, Mr. Eldridge?

MR. ELDRIDGE: On that principle, your Honor, and responding only to the question of contribution as opposed to indemnity, however, the legal principles would be the same as we set forth in our brief directed to the legal principles that are involved in terms of an indemnity and contribution claim in such a case. Fundamentally, if you take the proof that is necessary like Perez, the clear and convincing evidence,

requirement of falsity and the calculated falsehood and serious doubts as to truth.

THE COURT: Actual malice is the word.

MR. ELDRIDGE: Actual malice. If you take that as the sine qua non of what plaintiff Perez has to prove against Ali, bearing in mind, as the Court properly says, there is no claim directly against ABC Sports here, then what the Court would be doing is fundamentally allowing an indemnity or a contribution where you have a situation of, what I would refer to as, one intentional tort feasor. -- and nowhere have we been able to find any case law. In fact, what ever case law there is we submitted in the brief, seems to us to be to the contrary, that you do not allow contribution in such a case, and it must be such a case of an intentional or grossly reckless tort feasor for plaintiff to succeed.

Therefore, you can't have indemnity or contribution as a matter of law.

THE COURT: Take the simple case of a person who has been knocked down by an automobile and he turns around and sues the owner of the car and doesn't sue the driver who did the negligent driving. The owner then makes a claim over against the driver for contribution because he participated, obviously, actively in the

result of injury. If the plaintiff succeeds, the man who has been injured, against the owner of the car, why isn't it appropriate to admeasure the contributory faults of the driver in the case against the owner.

MR. ELDRIDGE: Your Honor, that is the case where the owner is fundamentally not at fault, and the --

THE COURT: That's exactly what Mr. Sharfman says. He says that Mr. Ali is fundamentally not at fault, and he was provoked by an incitement created in the first instance, and initiated by Perez. Perez was the first one who spoke up and defamed, with alleged falsehood Mr. Ali, and Mr. Ali says he was just replying to a provocation.

The question as to whether he replied appropriately or excessively is one that might be considered by a jury, but before Ali says, I didn't defame him.

MR. SHARFMAN: YOur Honor, the case upon which -- any more than the owner of the cars says he didn't hit him.

MR. ELDRIDGE: Also, that is a vicariously built situation which is clearly an exception to the rule on contribution and indemnity. But beyond that, if I take the analogy of a privilege of reply, as your Honor suggests, in order for Ali to recover on the claim

against ABC and ABC Sports, ABC that is had a privilege, I submit as a matter of law in this record. The publisher enjoys the same privilege, but in the indemnity and contribution claim, plaintiff, Ali, would have to prove that ABC lost the privilege as well, and that I submit is not in the record.

THE COURT: That's a matter for the jury to consider.

MR. ELDRIDGE: There is no ill will against ABC in this case.

THE COURT: That may be a circumspect attitude of the plaintiff who may not have wanted to take on too much in this case, but does that exonerate ABC?

MR. ELDRIDGE: ABC is a defendant in the state court next door in the very same lawsuit.

THE COURT: I am not concerned with what the problems are across the street. Over here, The fact of the matter is that the tape was broadcast by ABC, and the claim is in respect of that broadcast as well as the taking of the material for the broadcast.

I will reserve decision on that application as well as others on which I have reserved.

MR. ELDRIDGE: May I make one further statement on this?

THE COURT: Yes.

MR. ELDRIDGE: Also, I believe in terms of the press' First Amendment freedom, that any claim of --

THE COURT: You have no right under the First Amendment, whether you are the press or the television, to defame with malice or with reckless indifference to the truth, and that's what the issue is that is going to go to the jury.

MR. ELDRIDGE: Your Honor, may I just --

THE COURT: Whether there was defamation, whether the defamation was with actual malice or reckless indifference to whether or not the defmation was true, that will be what goes to the jury on the Perez case, and in the case of Ali against Perez again what goes to the jury will be due to the fact that both of them are admittedly public figures, whether there was a defamation, whether that defamation was with actual malice by Perez or reckless indifference to the truth in the light of what appeared in the demonstrative evidence and the testimony of the witnesses and the exhibits in the case.

MR. ELDRIDGE: Your Honor, may I --

THE COURT: I think that closes it, gentlemen. It gives you a pretty good preview as to how this case is going to be summed up.

Now, the only remaining question will be --

MR. ELDRIDGE: Your Honor, if I may, to the extent necessary to preserve my notes, I would like to renew my motions for a directed verdict.

THE COURT: That motion is denied. If anything, there is an issue here of fact, and you can't give a directed verdict where there are issues of fact to be resolved by the tryers of the fact. The case is not being resolved by the Judge. It is going to be resolved on the facts by the jury subject to the Judge's instructions on the law.

MR. ELDRIDGE: Your Honor, could I have one comment on the indemnity contribution concept?

I started to say that in my judgment, as we have argued in the briefs that have been submi-ted -- and I will not go through the arguments, they are all before the Court, as to the legal grounds for the basis -- but on this one point where you have just pointed out and suggested that the case against ABC and ABC Sports could be submitted to the jury, based upon the proof, if I understood your Honor's statement, proof that may be a question of fact with respect to the actual malice that may exist in the case, and I am not suggesting it does for one moment, against Muhammed Ali, would

legally be sufficient for the actual malice --

THE COURT: That's your statement of it, Mr. Eldridge, and this example is why a Judge shouldn't get in a conversation with a lawyer because when you run upstairs on appeal you will say, see, the Judge agreed with what I said.

I tell you right now, I disagree with your version of what I said. That is not what I said.

MR. ELDRIDGE: Then, may I urge the point --

THE COURT: You have made all your points. My point is thatyour motion is not granted. Now --

MR. ELDRIDGE: That sounds somewhat final.

THE COURT: I think, in view of the fact that we are approaching the weekend and you gentlemen may wish to organize your concepts for summation, that I will now recess the trial until 10:00 o'clock Monday morning for the purposes of summation.

At this time, I take it that I have received all of the requests to charge, and if I haven't, they are not going to be considered. I have some homework to do over the weekend to prepare a proper charge, and I don't intend to be assailed with any writings at five minutes to 10:00 on Monday morning.

MR. ELDRIDGE: Your Honor, we have not submitted

any request specifically in --

THECOURT: That's an omission that you better repair and repair it not later than noontime tomorrow, and you can deliver any requests that you have to my apartment and leave it in my apartment house. You will find the address from the clerk.

MR. SHARFMAN: May I submit an additional request, just one or two, your Honor?

After all, I have done my job. I have submitted one previously.

THE COURT: All right, you are under the same instruction, and Mr. Sullivan will be given the same privilege and instruction, and if it isn't there at 12:00, there will be no 22nd adjournment.

MR. SHARFMAN: Yes, sir.

THE COURT: You are to leave it with the mail room of my apartment house.

Now, what about the time for summation. How long is the speed-making going to take, Mr. Sharfman?

MR. SHARFMAN: I would ask an hour, your Honor.

THE COURT: Isn't 30 minutes enough?

MR. SHARFMAN: I would request an hour. I would hope to be finished in five minutes.

THE COURT: Do you mean you want five minutes up

to an hour?

MR. SHARFMAN: No, sir. I would like to have an hour reserved if I might, your Honor.

THE COURT: I think what we will do for you is to give you between 30 and 45 minutes.

Mr. Eldridge?

MR. ELDRIDGE: Your Honor, I would believe that under the evidence in this case, that I could sum up in 15 minutes. Not to exceed it.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: I would ask for an hour, your Honor.

THE COURT: Suppose you try and organize yourself for 30 to 45 minutes for the two principals, the two individual claimants, and Mr. Eldridge will probably be necessarily brief, I take it.

That means that the jury will probably be charged late in the morning, certainly no later than 2:00 o'clock so thatyou may prepare youselves accordingly. My suggestion is that you organize the exhibits and see to it that you know exactly what is in evidence so that we don't have any difficulty about that and the plaintiff to supply the defendant Ali with his exhibits before 10:00 o'clock on Monday morning so as to give

them the right of way, and Mr. Eldridge will follow in his summation and then make sure that Mr. Sullivan has the defendant's exhibits so that he could organize those for his summation. The clerk is instructed to excuse the jury for the weekend. You may tell them that they are excused until MOnday morning at ten minutes to 10:00 and please make it conveniently prompt.

THE CLERK: Yes, sir.

THE COURT: If there are no other matters to be attended to this afternoon, and I don't believe that there are any, it will be appreciated if counsel and the audience would remain in the courtroom for just the brief time it takes for the jury to go down the elevators and not be co-mingled with anybody who is here for any reason.

All right. Good night.

(Adjourned to Monday, October 18, 1976-10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Howard Cosell	478	487	491	501
James A. Farley,Jr.	504			
James L. Jacobs	517	524		
Richard Schrier	546			

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
29		497
37	510	

Court		
18	516	
19		545

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Anthony Perez, Jr.,

-vs-

Muhammed Ali, a/k/a Cassius Clay,

-vs-

ABC, Inc., and ABC Sports, Inc.

75 Civ. 1824

New York, New York
October 18, 1976--10:00 a.m.

Tk1
B1
a.m.

(Trial resumed - in the robing room.)

THE COURT: I am making the following additional rulings which will assist in guiding you on your summations.

So far as the third-party complaint of Ali against ABC and ABC Sports, I will not submit the issue of indemnity to the jury. I will submit the issue of contribution.

Secondly, so far as the claims for physical damage are concerned and to clarify my rulings dismissing the second and third counterclaims of Ali against Perez without prejudice and allowing the damages claimed to be considered as part of the first counterclaim, I note that there is an intertwining of defamantion damages with physical damages. The physical damages are referred to in paragraphs 35 of the second counterclaim and 42 of the third counter-

claim, and those paragraphs are stricken out.

The jury will be advised that the elements of damages to Mr. Ali allowable in this particular case may not include any recovery for physical injuries he may have suffered, but that the only elements of damages that may be considered in respect to either complainant would be for defamation, namely, damage to reputation, humiliation and mental anguish. This does not preclude mention by counsel to the jury of the physical contacts which occurred in the fights as bearing on the acts and statements of the parties and the knowledge thereof by Mr. Perez.

Now, I take it that nobody claims that there has been proof in this case of actual business injury to be compensated. Is that correct, Mr. Sharfman?

MR. SHARFMAN: That is correct.

THE COURT: Is that correct, Mr. Sullivan?

MR.SULLIVAN: Well, except for the inability of Mr. Perez to ever referee a heavyweight championship fight. That would be the only aspect that I would consider. He has never referred a heavyweight championship fight after that.

THE COURT: How many heavyweight championship fights have there been after that?

MR.SULLIVAN: Seven.

THE COURT: And you say that there is evidence

in this case which shows that he has been excluded?

MR. SULLIVAN: He has never had the opportunity to referee any of those heavyweight championship fights.

THE COURT: I will rule as a matter of law on that statement of counsel that it is perfectly clear that there is no evidence in this case that anybody excluded him from participation in any kind of a heavyweight bout and, furthermore, the evidence is very clear that Mr. Perez has not lost any business or professional income.

MR. SHARFMAN: May I just submit these to your Honor as specifications of our grounds in the motion for a directed verdict?

THE COURT: The reporter will add this statement of grounds in support of Ali's motion for a directed verdict for the record merely as legal argument.

"Statement of Grounds in Support of Ali's Motion for Directed Verdict:

"Pursuant to Rule 50(a), Fed. R. Civ. P., defendant and third-party plaintiff Muhammad Ali respectfully submits to the Court the following grounds in support of his Motion for Directed Verdict on plaintiff's claim against him:

"1. Ali's statements concerning plaintiff are absolutely privileged as comment by the First and Fourteenth

Amendments to the United States Constitution.

"2. Plaintiff has not established that Ali's statements were defamatory in the context in which they were made.

"3. Ali's statements were made in reply to prior statements and conduct by plaintiff, and plaintiff has failed to establish malice sufficient to defease Ali's privilege of reply.

"4. Plaintiff, who is admittedly a public figure, has failed to sustain his burden of establishing by clear and convincing evidence, as required by New York Times v. Sullivan, actual malice on Ali's part in making his statements concerning plaintiff or in their broadcast by ABC.

"5. Plaintiff has failed to establish that he has suffered any injury as a result of Ali's statements.

Additionally, Ali respectfully submits the following grounds in support of his Motion for Directed Verdict on the counterclaims against him by third-party defendant ABC:

"1. There is no evidence that ABC has suffered any damage as a result of Ali's statements.

"2. There is no evidence that Ali has any obligation to duty to indemnify ABC."

B2

MR. ELDRIDGE: May the third-party defendant join in the grounds in support of the directed verdict submitted by Ali here but for the claim with respect to contribution and note further in support of that that the findings in the records in this case do not support a finding of ABC or ABC Sports being a joint tort feasor.

THE COURT: All right.

MR. SULLIVAN: May I just say one thing on the record very briefly?

THE COURT: Yes.

MR.SULLIVAN: On the basis that the only two paragraphs claimed in the first counterclaim by Mr. Ali that Mr. Perez said, it is our position that those two paragraphs by no interpretation can be libel or can be made with malice and where there is no interpretation for the jury that counterclaim should be stricken by the Court.

THE COURT: That motion is denied.

MR. SULLIVAN: Thank you, yes.

THE COURT: The statements that were made were made for publication by reporters and that puts them into the libel category and not in the scienter category.

There is one other thing. I notice that there is a variance between what was actually said as evidenced by the record at page 148 by Mr. Ali and the exact words used

in the complaint. I think they are paragraphs 15 and 16, if I'm not mistaken, and since we have here the record that has reproduced the exact words that occurred on the broadcast, in charging the jury I will use the language reported at page 148 of the record. You may want to check that out.

(In open court - jury present.)

THE COURT: All right, Mr. Sharfman, you may proceed.

MR. SHARFMAN: Your Honor, fellow counsel, ladies and gentlemen of the jury:

You may recall in my opening remarks I pointed out to you that through the course of the trial the plaintiff's attorney would always speak first and asked you then that you wait until you heard Mr. Ali's side before you formed the conclusions as to what the facts are in the case. Now that all the evidence has been put before you, the order is reversed and I speak first and the plaintiff's attorney has the last word with you. I'm sure you'll measure his view of the case against your own recollections of the witnesses and the facts as you heard them.

We have been here since last Tuesday because Mr. Perez claims that his reputation as a referee in professional boxing has been damaged by Mr. Ali's statement on the ABC Wide World of Sports program that he was probably

paid by gangsters or had some money bet on the fight.

In short, wh[illegible]'ll come to the fact that Mr. Perez has established that he suffered absolutely no damage whatsoever as a result of anything that Mr. Ali said, before I do that I'd like to talk about another point. In a short while the Court will instruct you as to the law and the facts, the law that you are to apply to the facts as you find them in this case, and one of the things that he will instruct you about is that you must decide whether Muhammed Ali believed what he said concerning Mr. Perez, so before this key issue is placed in your hands I'd like to speak to you about believability, about what Muhammed Ali believed, because that is the issue, what he believed and why he believed as he did.

The facts begin with the phone call that Mr. Ali got in January of 1974, the day of his fight with Joe Frazier. Mr. Ali didn't recognize the caller but the message was, "We've reached the referee" or "The referee has been reached."

At the time Mr. Ali told his trainer, Angelo Dundee, about the phone call and neither one of them took it seriously. Mr. Ali had gotten crank-calls. He had never had a call about a referee before, but he had gotten crank-calls and he paid that call no attention. Instead, he went

about his business preparing to fight Joe Frazier that evening.

Now, you saw the films and you saw the tapes, the videotape, Plaintiff's Exhibit 1 of the Joe Frazier fight. And you have heard testimony from Mr. Ali, from Mr. Perez, from Mr. Jacobs about the 2nd round of the Joe Frazier-Muhammed Ali fight, and you know that in the 2nd round of that fight something very strange happened. Mr. Ali hit Joe Frazier with a very hard right hand. You could see it on the videotape. You can see Joe Frazier hop back like that when he is hit and you see Joe Frazier for the first time in any of his fights since Muhammed Ali -- Smoking Joe Frazier. He is called Smoking Joe Frazier because he is always coming forward, but here he is backing off and not only backing off, but being driven back across the ring under an avalanche of blows from Muhammed Ali.

Now, . the slow motion sequence that follows Round 2 on the videotape you can see Joe Frazier's face contort with the force of the blow. Make no mistake about it, Joe Frazier was hit and he was hit hard. He was driven back by blows by Muhammed Ali across the ring.

Mr.Ali told you that he hit him hard. Jim Jacobs, who was at ringside, told you that Frazier was in serious trouble. Howard Cosell, on the audio track on the

videotape, says at the time: "Make no doubt about it. There is no doubt about it, Joe Frazier was in deep trouble."

In fact, there is even a newspaper article, Plaintiff's Exhibit 29 that the plaintiffs put in -- if you read that article carefully, it points out that at the point in the round when Mr. Perez called the round short, Joe Frazier was in serious trouble. Nobody questions that. But all of a sudden Joe Frazier in all this trouble, Muhammed Ali having set him up, all of a sudden Joe Frazier is saved by a bell that didn't ring.

Now, that is a bell there has been a lot of talk about in this case, and it is a very funny bell because it is a bell that there is only talk about. There isn't any question, I don't believe, in any of your minds, that no bell actually rang and that nothing sounding like a bell was heard in Madison Square Garden at that time in that fight. There is only talk of a bell being rung.

B3 Frank Morris, the Deputy Commissioner of the New York State Athletic Commission, who testified before you on the first day here, told you he was there and no bell rang. Jim Jacobs, who was the last gentleman you heard testify on Friday, told you that he was in the second row press and that his company had microphones right over the ring that picked up -- hot mikes he called them, that picked

up all the sounds in the ring, and he heard no bell ring at the time. In reviewing the sound track he has never heard anything remotely like a bell.

Howard Cosell didn't hear a bell. He says so right on the tape: "I didn't hear a bell."

Angelo Dundee, who was also at ringside, told you he didn't hear a bell. No one heard a bell because there wasn't any bell that rang. Indeed, there is only one person in the whole wide world who claims that there was a bell that he heard, or something like a bell, and that is Mr. Perez who refereed that fight and who stepped in to save Joe Frazier.

Now, as you also heard and saw, there are big red lights on the four corner poles in the ring at Madison Square Garden. You also heard that referees at Madison Square Garden are told time and time again, over and over: Watch for the lights on the poles. Watch for the lights so that you can tell when the round is over. You can't rely just on the bell. You must watch for the lights.

You've heard testimony from Jim Jacobs that those lights are so bright that from anywhere in the ring you can see two or three of them when they go on. When they light up, you can see them. But in fact, when Mr. Perez stepped in-between Ali and Frazier, Mr. Perez wasn't just

standing anywhere in the ring, he was standing right in the corner and, as Exhibit M-2 shows, he is looking right at the pole and right at the light and the light isn't on, is it, ladies and gentlemen?

Now, another funny thing about that 2nd round. Mr. Perez told you that he thought he heard a bell. Indeed, that is what he told the Boxing Commission. He testified to you that when they asked him after the fight what had happened, he said he told them that he had heard a bell.

He also told some reporters at the time that he saw some flashes of light. You've seen the videotape. You've see the film of the 1st and 2nd rounds of the Frazier fight. There are no flashes of light that look like a red light on the pole. There is no question about a red light on the pole being mistakenly seen by Mr. Perez. Indeed, he testified before you that he did not see any red light and, indeed, he didn't. He's looking right there. There is no red light to be seen. He claims he couldn't see the pole, though, and he also testified when he finally listened to the videotape in the courtroom that when he listened to that videotape he couldn't hear a bell either.

Now, Muhammed Ali has told you, and Angelo Dundee also confirmed it, that after the Frazier fight, after the 2nd round incident, that Mr. Ali spoke to Mr. Dundee about it

and said he thought something unusual might have happened, but Dundee said, "Don't worry about it. We won the fight." And that is exactly where it rested, Ali had won the fight and went off not thinking about it any more, until he came to the Ali-Wepner fight.

Again, right before the fight, another telephone call, another voice. He doesn't recognize it, but it is the same message: "The referee's been reached."

Again he tells Dundee about it and again Dundee says, "Look, kid, there are cranks in every business. Just fight your fight."

Now, you saw Chuck Wepner in the courtroom. You remember him as the first witness that Mr. Perez called on his behalf. He's a big man and he's a tough man. He testified that he has never been off his feet, except for the end of the Ali fight in maybe 113 or 130 -- I don't remember which -- fights in his lifetime and he had never been knocked down, and he was going to fight Muhammed Ali for the heavyweight title of the world.

Now, you heard testimony, ladies and gentlemen, about how Chuck Wepner trained to fight Muhammed Ali for that heavyweight championship. You've heard how he trained by throwing rabbit punches and kidney punches and even kneeing his sparring partners, and you've heard that Angel Dundee

saw the training sessions and spoke to the press about it and said: "Be advised, this man is training to fight Muhammed Ali dirty."

And Tony Perez, a professional boxing referee, a professional boxing referee who told you that he reads four newspapers every day, claims he never heard anything about that before the fight.

What about the fight itself? I told you at the outset in my opening statement in this case that a picture is worth a thousand words. You have seen that fight now. You have seen the continuous rabbit punching to the back of Muhammed Ali's head and neck. You have seen the vicious kidney punches slamming into Muhammed Ali's kidneys. You've seen it all on the videotape of the Ali-Wepner fight.

You heard Mr. Ali testify round-by-round-by-round. You heard him testify about the rabbit punches and the kidney punches and you saw Mr. Perez standing looking, watching, staring at the action.

But did you see Mr. Perez warn Mr. Wepner even one time against kidney punching, indicating visually to the crowd, as he told you he was instructed to do and as LoBianco, the witness you heard the first day in the case and also a professional boxing referee told you referees are supposed to do? No, sir. There isn't one single warning for kidney

punching against Mr. Wepner, not one warning throughout that entire fight.

B4 How many times did you see Mr. Perez warn Mr. Wepner about rabbit punching in the course of that fight? Two or three times, perhaps, and only after Mr. Ali had been forced to protest against it. The referee has refused to warn Mr. Wepner and only after Mr. Ali had been forced to protest in order to show the world what was being done to him and permitted to be done to him by a referee who wasn't enforcing the rules.

You heard Mr. Perez testify after viewing the 1st round of the Wepner fight here in the courtroom that he didn't see any intentional rabbit punching in that round by Chuck Wepner against Muhammed Ali. You also heard Mr. Muhammed Ali testify about that round of the fight as well as other rounds. You watched him count Mr. Wepner's rabbit punches. You watched him count them in the 1st round and throughout the fight and you heard him testify the number of times, confirming there were over 150 rabbit punches by Mr. Wepner against Mr. Ali in the course of the fight, over 150 rabbit punches. There were numerous, scores of kidney punches. You watched the fight. If you watch that tape again you'll see Mr. Wepner's hand slamming time and time again into Mr. Ali's back and side viciously, all of this with virtually

no intervention at all from Mr. Perez.

Now, a picture is worth a thousand words. As I said, Mr. Perez looked at those pictures and said he didn't see any intentional rabbit punching in the 1st round by Chuck Wepner against Mr. Ali. You've seen the pictures. Do you believe Mr. Perez or do you believe Mr. Ali?

During the course of the fight you also saw Round 8 where Mr. Wepner brings his knee up in the direction of Mr. Ali's groin. Fortunately it didn't connect, but Mr. Wepner didn't know at the time that it wouldn't connect. You may recall Angelo Dundee's description of that as a "roundhouse punch with a right leg back," and he said he hadn't seen anything like that since he was a nine-year old watching a dirty fight in Philadelphia.

You also saw in Round 9 the so-called knockdown which you can see in Exhibit 17, Defendant's Exhibit 17, blown up. You can see clearly in that picture, Mr. Wepner's foot is standing on Mr. Ali's foot, and you could see Mr. Ali is falling down. Now, Mr. Perez ruled that that was a clearn knockdown, despite the fact that as Angelo Dundee told you, as soon as it happened Dundee yelled in, "He's on his foot. It is no knockdown. He's standing on his foot," and Dundee also told you that between the rounds, between the 9th and 10th round, he again told Perez, "That wasn't any

knockdown, Ref. He was standing on his foot."

As to that clean knockdown, even after he studied that photograph in the courtroom before you, even after looking at Mr. Wepner's foot on top of Mr. Ali's foot, Mr. Perez still says it was a clean knockdown.

Well, ladies and gentlemen, maybe what Mr. Wepner is trying to help Mr. Ali to his feet or help him maintain his balance.

What is the importance of a knockdown in a fight, that is, the ruling of a knockdown? In a close fight, in a fight that goes the distance, a knockdown can be the difference between winning and losing. A knockdown, as Mr.Ali told you, can be the difference between keeping your title and having your title taken away from you, and it was Mr.Ali's title that was on the line that night.

Now, you also saw in the Ali-Wepner fight Mr. Ali's repeated appeals in the early rounds of that fight to Mr. Perez for protection, for enforcement of the rules of boxing, and you can judge for yourself how Mr. Perez acted to those requests.

As you saw, as the fight progressed, as you got into the later rounds of the fight, Mr. Ali, the World Heavyweight Boxing Champion, had to take his gloved hand and hold it behind his head because he was being hit there so much

and it was hurting so much. You can judge for yourselves whether Mr. Perez saw any of this at the time. You know that he didn't do anything about it.

On the very first day of the trial, John LoBianco, the referee who is also a colleague of Mr. Perez, testified. He's a highly respected referee and Mr. LoBianco's testimony is quite clear, that a referee has an obligation to stop a fighter from using dirty kidney punches and rabbit punches against another fighter, and that that obligation requires him to issue a warning the first and second time it happens, a warning that can be seen by the crowd.

According to Mr. LoBianco's testimony, a referee who allowed a fight like the Al-Wepner fight to go forward with Mr. Ali being repeatedly hit with rabbit and kidney punches was just not plainly doing his job of protecting the fighters in the ring, and in direct contradiction to Mr. Perez' contention that Mr. Wepner's rabbit punches were unintentional. Mr. LoBianco did observe it to us: "How many rabbit punches can you land unintentionally?"

And I ask you this question: What can I tell you other than the fact that you've seen the fight? What can I tell you about it that you haven't seen for ourselves already? Angelo Dundee, who has seen more than 2000 fights, says that Mr. Wepner fought the dirtiest fight he ever saw.

No one questions that Mr. Perez is a capable, competent, professional boxing referee. That is what everybody has said who testified about his ability as a referee.

Indeed, Jim Jacobs said that he was intimately familiar with thousands of fight films and that he had seen Mr. Perez referee countless times and he said that Mr.Perez "is one of the most capable referees in the business, with an ability to maintain complete control over a fight."

But Jim Jacobs also said, if you recall, that when he saw the Ali-Wepner fight when it was being fought, when he saw the Ali-Wepner fight he thought that Mr. Perez' refereeing job was, in his word, "outrageous"; the most outB5 rageous performance he had ever seen from a referee in a professional boxing match in the 16,000-odd fight films that he has reviewed and fights he has gone to see, a performance so outrageous and so totally out of character for a referee of Tony Perez' skill and ability that in Mr. Jacobs' opinion that performance had to be dishonest. Those are Mr. Jacobs' words.

So outrageous was the performance, according to Mr. Jacobs, that by the 2nd round of the Ali-Wepner fight, as he told you, he was convinced that Muhammed Ali was in serious trouble becuase of the referee.

You also heard Jim Jacobs' testimony that after

seeing Mr. Perez' performance in the Ali-Wepner fight he though back to the Ali-Frazier fight and changed his opinion from previously believing that Mr. Perez had just made a mistake, an honest mistake, to believing that the 2nd round of the Ali-Frazier fight, the stopping of that 2nd round by Mr. Perez was also dishonest.

Now, that was Jim Jacobs' testimony, that was the testimony of a former Light Heavyweight Champion of the United States Army; that is the testimony of a man who is the manager of professional boxers, whose company distibutes and produced over 16,000 films of fights, a man you saw testify at some length before you and who I'm sure you'll agree is a man of unquestioned integrity.

But your task is to decide not what Jim Jacobs' believed but what Muhammed Ali believed, having experienced what he experienced, having lived through what Jim Jacobs merely observed. Can you doubt Mr. Ali's testimony when he told you that during the course of the Ali-Wepner fight he came to realize what was being done to him by Mr. Perez, and that during the course of that fight, the Ali-Wepner fight, he also came to realize what had happened to him with Mr. Perez in the 2nd round of the Frazier fight.

As Mr. Ali told you on the witness stand, he didn't see Mr. Perez get paid by gangsters and he didn't see

Mr. Perez betting money on the fight, but after what he went through, what he experienced with Mr. Perez refereeing, he couldn't see any other explanation for what had happened to him, so raw a refereeing performance from a referee so skilled, and although that is Muhammed Ali's belief that you jurors are concerned about, what would you believe as to Muhammed Ali?

How does Mr.Perez explain his performance? Mr. Perez wants you to believe that in fact he favored Muhammed Ali. He brought Chuck Wepner in as a first witness. Mr. Wepner testified that Mr. Perez wouldn't let him fight inside the way he likes to. He was inhibited by Mr. Perez, says Mr. Wepner. A picture is worth a thousand words. You saw the pictures. But the simple fact is Mr. Perez tells you that Mr. Ali's wrong: "I didn't cheat Mr. Ali. I cheated Chuck Wepner." And he says the same thing about the Frazier fight. What he says happened in the Frazier fight is that through the course of the fight he really helped Mr. Ali by not calling holding as he now says he should have done.

Under the circumstances, in view of everything that Mr. Ali experienced, in view of what happened to Mr. Ali in the A' -Wepner fight; in view of the stopping in the 2nd round in the Frazier fight at a time when a man is looking right at the light, in view of all of that, you understand,

I believe, how Mr. Ali saw things differently than Mr. Perez, things he should have?

Now, Mr. Muhammed Ali, as he testified to you, came away from Mr. Perez' performance with two large lumps in the back of his neck, a lot of pain in the back of his neck. He couldn't move his head from side to side. He had to move like this for about a week, and his kidneys bled so badly that his urine was blood-red for about 10 days after the fight. Immediately after the fight, before Muhammed Ali had said one word to anybody about anything, he heard Tony Perez addressing a press conference and he heard Tony Perez telling hundreds of reporters that "If anyone fought dirty it was Muhammed Ali."

He heard Tony Perez saying that he didn't take any points away from either fighter for rabbit punching because they were both doing it, and he heard Tony Perez say Ali was knocked down cleanly in the 9th round; that he had even tripped on his own feet.

Despite Mr. Perez' testimony here that he wasn't even watching the fighters' feet, that is how he explained his night seeing Mr. Wepner stepping on his foot, but he told the reporters then Mr. Ali tripped on his own feet.

What did Mr. Ali do after experiencing the illegal blows and the beating and the lack of refereeing pro-

tection in the Ali-Wepner fight? What did Mr. Ali do? He was outside the press conference room and he heard it, he listened to it. It was on microphones. When the press conference was about half over he came in for the other half. What did he say after hearing those remarks?

When the reporters asked him what about the referee, what he said was, "The referee was a dirty referee." What he said was he was "going to take the films of the fight and go to the mosques and the colleges and show them, show what this referee allowed to be done to him."

That is what he said. And then, what did Mr. Perez do? Mr. Perez wasn't content to let the matter rest there. Mr. Perez called Howard Cosell. He called Howard Cosell prior to the taping of the Cosell-Ali interview. He told Howard Cosell, "Mr. Ali outdid Chuck Wepner in rabbit punches, he outdid him."

It wasn't bad enough that he had told the reporters right after the fight, before anybody had said anything, before Mr. Ali had been before the press at all, before one word had been said by Mr. Ali, Mr. Perez had told the press, "Ali fought dirty and Ali and Wepner were rabbit punching equally," but he told Howard Cosell, "Ali outdid Wepner in rabbit punching."

B6 And you heard Mr. Perez admit finally when I

cross-examined him with his deposition testimony before he finally admitted what he meant by that was Mr. Ali actually threw more rabbit punches throught the course of the fight than Mr. Wepner did.

You've seen the fight. Do you believe Mr.Perez? He also told Howard Cosell that Mr. Ali was embarrassed by his performance against Chuck Wepner.

And you have also heard Mr. Cosell's testimony that he told Tony Perez that he would present Tony's side on the issues during the course of the upcoming interview, and that was fine with Mr. Perez.

Prior to going before the camera, Mr. Ali was shown a newspaper clipping, a clipping from the Daily News, an article by Dick Young, Exhibit 17, an article that was printed in the March 25 Daily News bearing the dateline March 24, the day before the fight, and you'll notice this sub-headline: "Ref Open to All Kinds of Trouble."

(Continued on next page.)

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What does that article say that Mr. Ali was shown the clipping of just before he went on the Cosell show? That article says that something funny did happen in the Wepner fight because they have announced the referee, Tony Perez, the day before the fight. That can bring the crooks and the gamblers in. That same Dick Young is the man who testified that Mr. Perez has a fine reputation as a professional referee. That's the article that Mr. Ali read.

Finally, we come to the taping of the Cosell interview. You have heard Mr. Cosell say on the stand that he promised Mr. Perez to truly and faithfully present Mr. Perez' side of the issues rather than Mr. Ali's.

Ladies and gentlemen, as you viewed the tape of that interview, I think you will agree that it is clear that Mr. Cosell did more than just keep true and faithful.

Every derogatory statement Mr. Perez made about Mr. Ali, every snide accusation about Mr. Ali Howard Cosell fully and faithfully conveyed during the course of that interview.

You will notice, ladies and gentlemen, you will notice in that interview that all of Mr. Ali's comments concerning Mr. Perz are in direct response to those snide accusations conveyed by Mr. Cosell. Of course you also

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heard that ABC and ABC Sports not only had the opportunity to edit the tape of that Mr. Cosell interview with Mr. Ali before it was broadcast, but that, in fact, they did edit it, deleting, for their own reasons, a phrase about Mr. Ali's black behind. That is all they deleted.

What was the basis for Mr. Ali's belief that the comments he made concerning Mr. Perez were true? Simply the evidence that was of his own experience, that is all, the evidence of his own experience, telephone calls he received before the Frazier and the Wepner fight, the inexplicable short call of the second round of the Frazier fight, when there was no bell and there were no lights in the Joe Frazier fight, Mr. Perez' outrageous performance in the Ali-Wepner fight, his outrageous failure to enforce the most elemental rules of boxing against rabbit punching, kidney punching, kneeing and stepping on toes despite Mr. Perez' reputation as being a capable and confident referee.

There is not a referee who would have, by mistake, allowed the performance presented by Mr. Wepner. Mr. Perez' immediate and unprecedented attack on Mr. Ali following the fight and the Dick Young article, a clipping of which was shown to Mr. Ali before the interview with Mr. Cosell, all these things added up in Mr. Ali's mind. All of

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these things added up to form his belief that the statements he made were true. There can't be any question, I don't believe, in your minds that Mr. Ali was personally attacking Mr. Perez here. Mr. Ali's testimony on this point is clear and very convincing. You can see the evidence in the Cosell interview itself, looking at the tape. What Mr. Ali told you here in court and what the tape of the interview shows you is that he is not angry at Mr. Perez, but he is angry with the injustice that he was subjected to. He is angry with the dirt that was allowed to be done to him in the course of the Heavyweight Championship fight.

He is concerned that no one has spoken up about it in his behalf, and it is equally clear that he is not out to injure Mr. Perez, but he is out to protect himself from being victimized in the same way again.

What will Mr. Perez' lawyers say to you to contradict the clear and convincing showing by Mr. Ali's testimony of his sincerity in what he said?

I will point to the pages from the book which Mr. Ali testified he didn't read and never read.

Mr. Perez' attorney will ask you to read the fine print in that book and to believe that that fine print came out of Mr. Ali's mouth, and that somehow it marks

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Mr. Ali as a liar.

I leave to your good judgment, after listening to and observing Mr. Ali on the stand, the question of whether he wrote that book and the weight to be accorded to it as evidence. Perhaps Mr. Perez' lawyer will also claim that Mr. Ali's suggestion that Mr. Perez referee his fight with Mr. Cooperman in Puerto Rico somehow taints the sincerity of Mr. Ali's beliefs at the time he spoke on the Howard Cosell show. I don't think you will find that that gesture by Mr. Ali is anything more or less than a sportsmanlike attemot to put an end to the dispute Mr. Perez had with him.

Let's talk about damages. Let's talk about Mr. Ali's damages. Boxing, we all understand, is a dangerous sport. People do get hurt in boxing. Some people have been killed. It is a sport which rules have been made to protect fighters, to protect the vital bodily organs from being beaten and injured, organs like the brain and the spine, where they meet back there and organs like the kidneys.

There is no question that Mr. Perez understood that physical dangers were something a fighter could be subjected to. You may recall that after he first denied it on the stand he finally admitted on cross

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examination that, yes, the rules against kidney punching and rabbit punching were to protect areas of the human body.

You also heard that Mr. Perez had been an amateur fighter himself, but that he didn't turn professional because of concern that he had been injured.

I don't say to you, ladies and gentlemen -- I am not saying to you that the kidney blows and the rabbit punches willfully administered by Chuck Wepner while Mr. Perez looked on and let him do it, I don't say to you that those punches injured Muhammed Ali for life. No one can say whether those particular blows contributed to a shortening of his career or not, but there is no question that for ten days after the fight with Mr. Wepner Mr. Ali urinated blood. There is no question for about a week after the fight his neck hurt him so bad he couldn't move it. He had two big lumps on it. Those facts are not in question. Can there be any question that those injuries contributed to Mr. Ali's understanding and belief regarding Mr. Perez' performance or lack of performance in the Ali-Wepner fight and necessarily contribute to his belief that Mr. Perez' performance in the second round of the Frazier fight was dishonest?

Let me turn, as I said I would at the beginning

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of these remarks, to the fact that Mr. Perez has suffered not one iota of actual damage because of anything said by Mr. Ali, not a farthing of damage.

Let's review the evidence. Have you heard one element, one shred of evidence, one piece of testimony, anything of any damage to Mr. Perez in the four days of testimony you heard last week? That's a rhetorical question. There is no such evidence. Instead of evidence of injury to his reputation, witness after witness has testified to Mr. Perez' good reputation, now and always.

There is no one person who said that Mr. Perez' reputation is less now than it was prior to Mr. Ali's remarks. Has he lost any work as a referee? That, too, is a rhetorical question. The answer is itself. Such is the world of boxing that Mr. Perez, who refereed only one Heavyweight Championship fight in 1970 or 1971, four or five years prior to the Ali-Wepner fight, has refereed two World Championship fights in the year and a half since the Ali-Wepner fight, won the World Middleweight Championship bout he refereed in Madison Square Garden in June 1973, only three months after the Ali-Wepner fight, the other, the Light Heavyweight Championship of the World in Oslo, Norway which he refereed in, I think, March of 1976.

Indeed, Mr. Perez testified at the beginning

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of his case that only six weeks ago he refereed what he called an important heavyweight fight between George Foreman and Scott LeDoux.

So much for Mr. Perez' damage as a referee. What about his children? What about his children, Mr. Perez' attorney told us in his opening statements had to go to school in the Bronx and hear bad things about their father. Mr. Perez told us his son had come home crying. Do you remember, ladies and gentlemen, that in cross examination Mr. Perez didn't even know where his 11 year old son lived, other than that he lived somewhere in Queens with his mother? You saw no testimony or evidence of any sort in this case that anyone thought any less of Mr. Perez after the Wide World of Sports program than they thought of him before. You will draw your own conclusions as to whether Mr. Ali's statement on the ABC television program were understood by anybody to be statements of historical fact about Mr. Perez as opposed to comment and opinion by Mr. Ali on Mr. Perez' performance, regardless of whether Mr. Ali believed them to be true or not. In that regard, it is interesting and important, I think, for you to note that there hasn't been one witness who has told you that he believed that Mr. Perez' reputation was harmed.

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Last Tuesday at the beginning of this trial, Mr. Perez' lawyer, in his opening statement to you, asked you to make him prove everything he said. Make him prove every single word, and if he doesn't prove it, he said, throw him and his client out of court on his ear and don't give them a dime.

I say to you in closing, that's very, very good advice. I am confident you are going to do as he asked.

Thank you and thank you for your attention and consideration.

THE COURT: Mr. Eldridge?

MR. ELDRIDGE: May it please the Court, ladies and gentlemen of the jury, fellow counsel.

I, at this stage, almost feel like reintroducing myself again because, as you noted in my opening, I did just that to tell you that I represented ABC and ABC Sports in this case. I also told you in that opening that I would sit and await some evidence that ABC or ABC Sports was, in any way, responsible for the defamation of Tony Perez which is the subject of this lawsuit.

I also told you and tried to explain how we happened to be in the case. As the Court noted in the beginning and I noted, there is another case, Tony

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Perez against ABC in the court next door for the same defamation. In this case, Mr. Ali felt, when Tony Perez sued him for defamation for Mr. Ali's remarks, that he should bring ABC into the case on the theory, presumptively, that ABC or ABC Sports should pay for the remarks made by Mr. Ali of and concerning Mr. Perez if there were any award made by a jury in favor of Mr. Perez. That is fundamentally how we happen to be here.

In terms of any award, and I believe the Court will tell you, if there were an award, and I submit there should be none in this case for Mr. Perez, if there were an award in this case it would only relate to any compensatory damages that were assessed against Mr. Ali, not any punitive damages which you will hear more about from the Court.

I too will go back a little later and repeat what I believe the evidence shows completely clearly here in this case, and that is that Mr. Perez sustained absolutely not one iota of damage as a result of anything that was said on the Wide World of Sports program on March 29, 1975, the program that you have seen in its entirety.

ABC, ABC Sports produce the Wide World of Sports as a program. It is a subsidiary of American Broadcasting Company, Inc., the parent company. The parent company fundamentally is involved in the broadcasting business

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as opposed to putting the program together.

Mr. Ali and Mr. Wepner were guests on the program, quite appropriately, since the entire program was dealing with the Ali-Wepner fight. They were the contestants, combatants of that fight. As you all know, a controversy evoked as a result of the fight between Ali and Wepner. Indeed, I might suggest, and the evidence clearly points out, and you might even wonder if there would have been a controversy if Tony Perez had not immediately, as soon as the fight was over, gone before the world wide press in a press conference -- we were not there, we knew nothing about it, except what we read in the papers the next day -- and he went and chastised the Heavyweight Champion of the World for dirty fighting.

I won't go over the many things that Mr. Sharfman said in terms of the conduct of Tony Perez in officiating that fight. I subscribe to the point that Tony Perez did not do his job in that fight. I also find it somewhat appalling that an official would be the first one to make charges against the fighters in an athletic contest that he had just officiated, and make derogatory charges against the Heavyweight Champion of the World when the fight pictures--pictures do speak louder than words--clearly show who was the dirty fighter, Chuck Wepner. He

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admitted he has a dirty, roughhouse style of fighting.

Tony Perez should not have allowed that to happen. I subscribe to what Mr. Jacobs said, it was an outrageous performance by an official, more outrageous was Tony Perez going to the microphone of the world wide press and calling Muhammed Ali a dirty fighter. You have seen the fight.

The question of where do we come into this case--it is very difficult to argue in support of our position, because there is no evidence in this case to link either of my clients to the charges of Tony Perez and the replies of Muhammed Ali, not one bit. There is no proof here in this case that ABC or ABC Sports is jointly responsible in terms of what is necessary to prove in a defamation case.

The Court will instruct you on the evidence that the plaintiff must prove in this case by clear and convincing evidence before he could succeed against Mr. Ali; by the same token, before he could succeed, that is Mr. Ali could succeed against ABC, but that issue never even comes up unless you, the jury, determine that Mr. Perez should receive some award of a verdict on the facts of this case.

As I said, I subscribe to Mr. Sharfman's analysis of the evidence in this case. I think it was presented

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clearly to show the thinking process of Muhammed Ali as to why he had a belief, as he expressed it, on that program. No one has effectively counteracted or contradicted that belief, and that's the test in a case such as this kind where you deal with public figures which Mr. Ali and Mr. Perez concededly are.

I would not comment, of course, on Mr. Ali's counterclaim against Mr. Perez, our clients are not involved in that.

What ABC did in this case is what the press in this country are privileged, indeed, have a duty to do. If there is a controversy involving public figures arising out of any matter of legitimate public interest, boxing, the Heavyweight Championship certainly is that, it is the duty, I submit, of the press to present both sides of the controversy that comes about as a result of the public event, and the public figures involved therein.

Howard Cosell, as was pointed out, clearly presented Tony Perez' position in that interview. Muhammed Ali presented in reply his position in that interview and that public controversy, and that is what our American press does day after day, and I believe, under the First Amendment privileges of our Constitution, that our American press should remain free to do that and bring to you such

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information as does involve public events and public figures.

I was interested in the claim that there was defamation here by Mr. Ali. If you listen to the tape of that program and listen to Mr. Cosell, a good reporter, trying to get the facts, presenting Mr. Perez' side of the case, and you find that Mr. Ali presents facts in the case and then he has the comment which leads to this litigation, I submit, that probably he was paid by gangsters, maybe he had a bet on the fight -- I submit to you that that type of language given to the audience that we believe we enjoy on Wid World of Sports -- which are mostly people who are interested in sporting events, in this case, this day particularly, a fight man -- when you hear the cries that athletic contests -- the referee must have been fixed, or that call, it was larceny. People who are involved in the American sports scene and who listen and participate and who are fans do not translate that language into a specific criminal charge.

You too often hear the cries of the ballgames, if you go. The ump's a robber. That isn't a charge, in effect, that he is a robber. I submit to you that you listen to what Mr. Ali said in that program in terms of his criticisms where he felt -- and I submit that he did --

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get a very raw deal from Tony Perez.

The question here that my colleague, Mr. Sharfman, representing Mr. Ali, asserted, there is no damage in the case. There isn't, and I had the fortune, perhaps, to be somewhat like you. I had the opportunity to listen most of the time in this case, and I made notes. I could not find any evidence that anything that was said on the Wide World of Sports program on March 29th, caused Tony Perez any actual damage or injury.

I would ask you to search the record. Because if that is so, my colleague, Mr. Sullivan, representing Mr. Perez, invited you to turn him away without a dime and you should do that. He hasn't proven his case.

In terms of a couple of lines that Mr. Sharfman made in his closing remarks, he said, and I assume this was said in the event that you, the jury, should, in your judgment, believe Mr. Perez was entitled to recover to Mr. Ali, he says, well, ABC could have edited the tape, after all they edited the term black bottom out of the tape.

Let me refresh your recollection of the testimony, of the duty of the press to report fully both sides of the controversy. Nothing was taken from Mr. Ali's interview, andnothing will be taken from Mr. Ali's interview

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after he has left the premises. That removal was done while Mr. Ali sat there in terms of the black behind so that he was fully informed.

If we were going to take something out of an interview with Mr. Ali, it would have only been done with his consent or in his presence. That's the way a responsible press reports fully the facts. There was a reference there that maybe -- by my colleague -- that maybe Mr. Cosell agitated Mr. Ali.

My recollection of the testimony is that Mr. Ali himself said that he was not agitated. He said he didn't know what Mr. Cosell's intentions were. He has been many times interviewed after his fights by Howard Cosell on the ABC program. Then he said something that I think, probably, answers it.

He said in a light voice, he said, you know if it were my television station I would have broadcast my interview with Howard Cosell in its entirety. That is what he said.

I think he is recognizing the opportunities that we and the press have to report fully when he himself -- and the reason he says that is because he believed what he said, and I believe further that if you take the words and in the context in which they were presented and

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the reply, because all Mr. Cosell did was to present, attempt to present Tony Perez side of the case, what Tony had told him and then Mr. Ali responded, and in that context to the audience that listens to an hour and a half about prizefighting, it is a pretty sophisticated sports fan audience that listens to it.

I really would like to merely conclude by saying that I have not participated in this trial to any degree. I asked Mr. Ali one question, whether there was anything that was said in the program by Mr. Cosell that he considered uncomplimentary or defamatory, and you will recall that he responded in the negative.

I don't believe that Mr. Perez should succeed in this case because the evidence does not warrant it consistent with the charge of law the Court will give you.

Accordingly, there cannot be any kind of claim made by Mr. Ali against ABC or ABC Sports.

I thank you very kindly for your attention.

THE COURT: Mr. Sullivan.

MR. SULLIVAN: May it please the Court, fellow counsel, ladies and gentlemen.

Boxing in the United States and on this earth is Muhammed Ali. The courtroom during the week has been

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filled, filled with reporters, filled with people. Do they come here to see Tony Perez, do they come here to listen to Bob Sullivan? They come here for Muhammed Ali.

The millionaire Heavyweight Champion of the World, ladies and gentlemen, the man who has made millions saying anything he pleases no matter who it hurts. They know he is capable of saying anything, and that's why they are here.

THE COURT: I don't believe that there is any evidence on that subject at all, and I don't think that remark is justified and the jury may disregard the statement. We are not here to pit a person's check status against other persons'. The justice in this court is to be of an equal character, equal to all without prejudices.

You may proceed.

MR. SULLIVAN: Perez comes into this court, and in his pleadings he said"Muhammed Ali made statements about me, they were libelous, they were malicious." In the state court action Mr. Perez takes a consistent stand. He says the things he said were so bad ABC should not have shown them. That is consistent, ladies and gentlemen, the two positions.

Muhammed Ali could have filed an answer and said, "I said it and I will prove it true," but what does

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he say? He says, ladies and gentlemen, that Tony Perez libeled me first and I want to get to that right away, Tony Perez libeled me first.

I want to read for you direct quotes of everything in that counterclaim by Muhammed Ali that Tony Perez said, and it is on the tape, and I submit to you that it was only played once for you which the defendants do not emphasize so that they might comment on it.

You have the right to call for anything in the jury room, call for it and listen to it.

I quote from it directly. Listen to the words and tell me if it is libel.

"He purposely did the rabbit punching."

Ali said on the stand that he did it on purpose. He told you Judge, but he said he did it on purpose, to protest, but on purpose.

Continuing:

"Chuck did not do it purposely.

"If there is one man who fought dirty last night, I think it was Ali."

That is what Tony Perez said. That was his comment and opinion on a fight. It is funny that it was never mentioned to you that Tony Perez said, "There is one man who fought dirty last night, I think it was Ali."

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There is one more paragraph to what Tony Perez said.

A clean knockdown. That is the way he ruled it. Listen to the explanation.

"Ali tripped on his own feet but he went down from the effect of the punch in my opinion."

It is funny you didn't hear that when they spoke of it, did you. "He went down from the effect of the punch in my opinion."

"He is just embarrassed because a man like Wepner knocked him down."

That's it ladies and gentlemen. That's what Tony Perez said. Is it libel? Is it said with malice or is it fair comment? Was Tony Perez wrong about whether or not Ali tripped on his own feet, or he tripped on Mr. Wepner's feet? Foot? It looks like it.

I tell you the truth, it looks like it. Tony Perez tells you he is looking in the ring, he is watching the fighters upstairs. He didn't see the feet. That's what he said,"I didn't see it."

He even said, ladies and gentlemen, in that press conference, "He went down from the effect of the punch in my opinion." That is it. That's their libel case against Tony Perez.

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How did they comment about it? Mr. Sharfman then called it snide accusations, immediate and unprecedented libel. Mr. Eldridge said that Perez said, "Ali is a dirty fighter." That is not what I said. He said it was derogatory, he chastised Ali. Those are the comments, ladies and gentlemen, listen to the tape and don't let them mislead you as they have done throughout this trial.

This case is not about Tony Perez' performance in those two fights. If Muhammed Ali said Tony Perez was a lousy referee on the night of the Chuck Wepner fight, that he was terrible, that he was outrageous, that would not be libel and we would not stand here before you. That would be his opinion. That would be fair comment. He is a referee. The man -- Mr. Ali is entitled to that opinion and he would be entitled to express that opinion.

I show you the two fights for background because you are entitled to see them. You are entitled to see the entire picture. Tony Perez said to you, ladies and gentlemen, this is the toughest fight that he ever did.

I maintain that Tony Perez' position in this trial has been 100 per cent truthful and consistent. And that everything we have presented to you has been truthful and consistent, and I will not give you lawyer talk, ladies and gentlemen. I am not going to stand

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before you and tell you that in my opinion Tony Perez did a great job in the Wepner fight because it is not true.

In my opinion Tony Perez had a bad night in the Wepner fight and his performance was not good. But what is the approach of Muhammed Ali? He comes into the court and he says, number one, it is not libel, it is not slander,he libeled me first, and I read to you, and I don't think he did.

Then on the other hand he of his own independent will brings in ABC as a third party defendant and says, but if the jury finds it is libel, don't blame me, it is your fault, if it was so bad what I said, you should have blacked it out.

Is there any consistency in that position or are they giving you lawyer talk? You jurors have seen in court a subdued, insincere and polite Muhammed Ali. That is also their approach, ladies and gentlemen, because you jurors are the dollar figure in this case. It is to Muhammed Ali's advantage to come across as sincere and polite because you are were the money is.

You did not see the real Muhammed Ali in this courtroom, ladies and gentlemen, you saw the real Muhammed Ali before he was called to the test on that tape. That was the real Muhammed Ali, because that, at

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that time, the money was in building up the gate. I ask you not to be fooled by the charade that went on in this courtroom. His actions in this courtroom, ladies and gentlemen, were meant to hold the figure down,was as good as his act on television to build the next gate up. A verdict for Muhammed Ali in his favor or a small verdict in favor of Tony Perez would make that surely a success, ladies and gentlemen, and would send Mr. Ali out of this courtroom laughing at you, laughing at everything this Court stands for and most important of all, laughing at what he said about Tony Perez.

For a long time the entire defense was a lie. For a long time, as if you would never hear from that book. So for a long time it was safe to say that you heard Mr. Ali say, "I never had trouble with my hands before the Frazier fight."

There were no doctors. No one ever thought to call off the fight. "I was absolutely sure that I hit Joe Frazier very hard," and then lo and behold we finally got to the book and then it went in.

We hear of pages where he mentions hand trouble before the Frazier fight. We hear his manager, Herbert Muhammed urging him to call off the Frazier fight. We hear that he is not sure that he hit Frazier that hard.

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You can call for it, ladies and gentlemen, and read it.

Most important of all, so contradictory, we hear Dr. Peter Greco who came every day to the camp to give cortisone shorts to the hands, to give wax treatments tothe hands. I even tried to remind Mr. Ali in case he forgot what about the wax treatments. What about Dr. Peter Greco. Still he denied it all the way down the line because the book hadn't gone in.

Then, to continue, Muhammed Ali's reading habits, incredible. He never read his own book. He doesn't read the contract that he signs for the book. He never read any newspapers for a day and a half before that fight that said Tony Perez was going to be the referee of that fight because anything,ladies and gentlemen, that could have hurt his case in any small way he says he never read.

What is the one thing that Muhammed Ali read? The one thing Mr. Sharfman has to have him read in order to get it in before you -- that he read. Nothing. He never reads anything else. This he reads.

Ladies and gentlemen, the entire defense is not believable. I ask you to analyze that article. That also points out what the defense tried to do. Read it closely. "First impression ref open to all kinds of

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trouble, things are crooked."

Dick Young wrote this article and who was he trying to criticize? Read it. He is trying to say this shouldn't happen because of what could happen to a referee. He doesn't say anything bad in here about Tony Perez. Tony Perez didn't ask to have the referee announced the day before the fight. Dick Young is criticizing that boxing commission out in Ohio formed the week before the fight.

If you wanted to know the real truth, if anybody wanted to bring out the real truth in that article, ladies and gentlemen, I brought Dick Young in here and put him on the stand and Mr. Sharfman never asked him one single question.

We come to the one witness, Jimmy Jacobs. Ladies and gentlemen, Jimmy Jacobs, in here in court when Mr. Ali testified, gets up on the stand and repeats the same thing Muhammed Ali said, word for word. It was verbatim. There wasn't a change in a comma.

That, ladies and gentlemen, is preparation. I am amazed that Mr. Jacobs didn't say that he also got two anonymous phone calls. That's the only part of Ali's story that he didn't repeat like a parrot.

I will talk about quality and quantity of evidence later on, ladies and gentlemen.

Why Jimmy Jacobs? 18 years in a row the United States Hand-ball Champion, truly a great athlete. Why did they bring Jimmy Jacobs in here? All of the people who are known and I mentioned in the fight game, how many of them must they have gone to and been turned down before they finally got to Jimmy Jacobs? Mr. Dundee, he wasn't prepared because he came into the court and sat here listening.

If you remember, your Honor told me about a quarter to 4:00, put on another witness, and I turned around and I didn't have another witness. I had been told that Mr. Dundee had been in court and so I thought let's call Angelo Dundee and see what he has to say. Angelo Dundee had been in court, ladies and gentlemen, that day and he had heard Muhammed Ali say, "I did not have any sparring partners throw kidney punches and rabbit punches at me in training for the Wepner fight."

I submit to you that that is the kind of thing that a trainer who has been in with his fighter for some years is going to back his fighter on.

Angelo Dundee did not know that at the examination before trial of Muhammed Ali where Mr. Ali swore under oath in December of 1975 he had said, "The day we found out we were going to fight him, about five, six weeks before the fight, and every day in training we trained

for this. I had my sparring partners throw kidney punches, rabbit punches in training daily to get ready for it in case it was allowed."

Word for word. Mr. Dundee didn't know about that, but he backed his fighter on that. He was in court when Mr. Ali said, "I didn't have any trouble with my hands," and so I also submit to you that the kind of thing that a trainer must back his fighter on.

When I reminded Mr. Dundee of the wax treatments he knew, you saw, no wax treatments until I suggested it to Angelo Dundee. He remembered. He made light of it until we got the book in. You back your fighters, ladies and gentlemen, on things like that, but give Angelo Dundee this, he drew the line. He drew the line when you asked him to go too far, ladies and gentlemen, because Angelo Dundee who has lived with Muhanned Ali for some years, he wouldn't go any further than backing his fighter on the training type things.

He said, "Because I knew Tony Perez was an honest referee, because I knew Tony Perez was an honest referee after the Frazier fight, after the Wepner fight, I wasn't concerned,"and then at the end he said, "I have also known Tony Perez as an honest referee, he is an honest man."

Give him that, ladies and gentlemen, he drew the line when it came to destroying a man's reputation.

Mr. Ali told you that he wants to clean up boxing, he wants to go and show what has been done to clean up boxing, and his way of cleaning up boxing is to ask that that same crooked gangster referee climb into the ring for the next fight. That is cleaning up boxing? Then the anonymous phone calls, the old libel defense, tell them you got an anonymous phone call, who is going to say you didn't. Only the facts. Jurors have to analyze facts to see. It even states in this article, ladies and gentlemen, it is so well known.

"Can I imagine this happening in New York," he said,"how can they announce the referee a day before the fight. We would never permit it."

You heard the Commissioners tell you when is the referee announced? One hour before the fight. Who announces it? Mr. Morris said, "I am the Deputy Commissioner, only the Commissioner." They forgot that because Mr. Ali said he got the anonymous phone call before noon, before noon he got that anonymous phone call and he never got it because no referee had been appointed and everybody in boxing circles knows it.

The second call that he got before the Wepner

fight, ladies and gentlemen, once again Mr. Dundee wasn't prepared because Mr. Dundee got up on the stand and I asked him about the phone call and he knew about the phone call defense, but when I said to him when did he get it, Dundeed knew one thing, he knew he didn't get it -- he knew that Ali did not get that phone call on the day of the fight. He knew it. He said he didn't know Ali said it, but he said he got it the day before the fight. He got it the day of the fight. Ali said he got it the day of the fight.

Dundee knew that couldn't be true and I will tell you why, ladies and gentlemen,and just think about it.

You try and call Muhammed Ali tomorrow and when the switchboard operator says who is it you say never mind and you say a friend, you try and get through tomorrow, but forget tomorrow, the day of the fight? The man is fighting at 8:00 o'clock, that day he is sitting there taking anonymous phone calls? He is sleeping, he is resting. The switchboard operator says who, the caller says oh, an anonymous phone call, or I want to tell him we have got the referee or it is a frame, you could never get through and Dundee knew it and those phone calls are as fake as the rest of the lies in this case.

Tony Perez in the Frazier fight, and let's remember this, that is the fight where Ali said he was being paid by gangsters and he bet on Frazier, and regardless of how Mr. Eldridge tells you, ladies and gentlemen, if you find a maybe in that sentence, tell me or maybe he bet on Frazier, no such word. Let's call it as it is. Let's not try and mislead jurors. He said probably paid by gangsters or he had a bet on Frazier.

In that fight, ladies and gentlemen, by any stretch of the imagination, Tony Perez could be deemed to have helped Joe Frazier in his second round and at no other time. No other time whatsoever.

I am not going to say that a man who says Perez didn't help Frazier is illogical in the second round. I say he did it by mistake but it helped him, sure it did, but the entire rest of the fight study it, examine it, not one foul by Frazier through the entire fight, no rabbit punches, no kidney punches, nothing. Ali held. I look at it, I think if you look at it, I think he was holding. If Tony Perez was paid by gangsters to swing that fight, all he had to do was warn them. All he had to do was take one round away because as unanimous as that decision was, ladies and gentlemen, it was 861, 87 and another 861, I believe. All he had to do was take one round away, order the judges take that round away, that changes

the entire fight. Especially if Perez goes and votes for Frazier. But he doesn't. In a close fight like that he votes for Ali.

I submit to you, ladies and gentlemen, that if that man, Tony Perez, had been paid by gangsters in that Frazier fight for the job he did, that that is not Tony Perez sitting in the first row. He would be at the bottom of the East River. Because the entire fight shows that it is not true. Listen to the fight if you want. Listen to the fifth round. Listen to Drew Bundini Brown yelling throughout the fight, especially in the fifth round, "hold him till the traffic cops comes. Hold him until the traffic cop comes" and the traffic cop is Perez, I submit, ladies and gentlemen, because that is Ali's style.

He can hit from afair, nobody does it better, move and hit with those long hard punches but Frazier is an in-fighter so once he gets in close, don't try and break away, hold him because when the referee comes he separates you and then you start anew again from a distance and that's the entire strategy of the fight.

Listen to Brown. You can hear it in the tape in the fifth round. "Hold him until the traffic cop comes.'

On Ali's case they came into this court and

claimed injuries. Two personal physicians, Dr. Williams and Dr. Pachecco, what happened to them? Where were they? Why didn't they come to this court to testify? Because you weren't going to get a doctor to lie like that, ladies and gentlemen. That's the only reason they are not here, no other reason. Proof? If there was such an injury you should have heard it from the doctor. There was no trouble getting him here. Ali admitted himself that the doctors said it could have come from over the years, I imagine what the doctor would have said. If it existed at all.

Maybe that's why he lied, ladies and gentlemen, about the sparring partners, maybe that's why he tried to tell you that he didn't have sparring partners hitting him in the kidneys for five weeks before the fight and hitting him with rabbit punches for five weeks before the fight. There was no injury here, ladies and gentlemen, and it is obvious. It embarrassed, in my opinion, Mr. Ali, as much as it was distasteful for me to go into it.

The bit with the 15 minute bathroom trips, dreamt up, ladies and gentlemen, by lawyers. Mr. Ali was embarrassed, it was distasteful, it was trash. I had to go into it, they claimed it. They claimed it. That's theonly reason we had to go into it, ladies and gentlemen, it didn't belong.

You will hear about quantity and quality of evidence in the judge's charge and I submit to you on the issue of Tony Perez in that fight you heard from a quantity. Quantity is not the big issue. Let's cover it first: Morris, Farley, Recht, LoBianco, Cosell and even Angelo Dundee. They brought you Jimmy Jacobs and I wonder, ladies and gentlemen, how many men they went through before they found one man, Jimmy Jacobs, and nobody else, but let's talk about quality. That is important, quality.

They brought you a man who views fights, no question, and he is the United States Handball Champion for 18 years.

I tried to bring out, ladies and gentlemen, quality. I wanted you to hear them: The Boxing Commissioner of the State of New York, the Deputy Commissioner for 23 years, an elder and respected judge, from whom you get another viewpoint, one of the top three referees in the country, and certainly the foremost sportscaster in the country and finally you heard it from the man's own trainer. I submit, ladies and gentlemen, that is quality over and above quantity.

We talk about clear and convincing evidence of the serious doubts Ali had and the best evidence in the entire world, ladies and gentlemen -- and Mr.Sharfman said you would hear it from me and he was absolutely right, because

knows it -- the best evidence in the world is that after the Frazier fight and all the things he said he never objected to Perez in the Wepner fight and after the Wepner fight and all the things he said, included, and you heard it, "I don't ever want that man to referee one of my fights again, he's a racist.

"I'm out to get the referee. He was paid by gangsters, probably paid by gangsters. He bet on Frazier."

Six months later: "I want Tony Perez to referee the Cooper fight."

Can you believe that? Do you? You jurors have a difficult job, but can you believe that?

And then he still gets on the stand and says that he still believes it and he never objected to Tony Perez.

Serious doubts about the truth, ladies and gentlemen?

Damages. They submit to you that there are no damages in this case. Well, it depends on what you call "no damages." Has Tony Perez refereed other fights since this happened? Yes, he has. No question. No question he has refereed other fights.

I agree with their statement to this effect: No professional damage as to how many fights he referees.

There are two kinds of damage, ladies and gentlemen: No.1, every time Tony Perez climbs in a ring for the

rest of his life people will say, and he knows they will say, and it will be written after each fight: "That is the man the Heavyweight Champion of the World said bet on Frazier, took money from gangsters, is a racist."

Oh, sure, the Boxing Commission are honorable men. He will climb into the ring, but that will be said every time. And then, ladies and gentlemen, the most important thing to me and that is where I differ from them so much, they say it is nothing. I say it is a man's reputation. They obviously think nothing of Tony Perez' reputation. The millions of people who watch ABC Sports say, "The Heavyweight Champion of the World said those things." Are they going to stand here and tell you nobody believed it? People watch TV and they listen and here is the Heavyweight Champion of the World and, right or wrong, respected by so many ladies and gentlemen, especially the younger people, are they to say that my client's reputation is worth nothing? Did Tony Perez attack Muhammed Ali's reputation in what they call libel?

But they submit nothing. I submit to you, ladies and gentlemen, on the issue of compensatory damages that that man's reputation is worth more than nothing.

And on the subject of punitive damages, ladies and gentlemen, Muhammed Ali has always had his own license

to say whatever he pleases and he said it on that tape and I say to you, ladies and gentlemen, and I ask you to speak out as the representatives of this community to say that this community will not tolerate the kind of vicious attack that Muhammed Ali made on Tony Perez.

I ask you, ladies and gentlemen, to take away his license to say the kind of things that he said. I tell you frankly that a small award in this case spits on Tony Perez' reputation, sends Muhammed Ali out of court laughing, and gives him his license to say anything he wants regardless of who he hurts, regardless of who he destroys, because it won't effect him.

I ask you, ladies and gentlemen, not to say that Tony Perez refereed a good fight when he refereed the Wepner fight. I ask you to say that Muhammed Ali knows and we know that Tony Perez was not paid by gangsters; that Tony Perez did not bet on Frazier; that he's not a racist and all the rest.

I ask you, ladies and gentlemen, to restore to that man his honor, that is all I ask. Thank you very much.

THE COURT: Ladies and gentlemen, we will take a five-minute recess. You may go out at this time. I will then give you my charge.

(Recess)

CHARGE OF THE COURT

THE COURT: Mrs. McCombe, ladies and gentlemen of the jury:

First, I want to express to you the thanks of the Court for your faithful devotion to your duties in this case. Your attention has been very noticeable.

We have now reached the time when you are to be instructed on the law applicable to this case, and then you will retire for your deliberations.

You have now heard all the evidence introduced by or on behalf of the parties, and through the arguments fo counsel you have learned their ideas in respect of the conclusions to be drawn.

A lawsuit is a civilized method of determining differences between people and entities. It is on the basis of the administration of a system of justice that the determination of those differences is fairly and honestly made without passion or prejudice on both the law and the facts. You, as the jurors, and I, as the Court, have a heavy responsibility. We must assure that a just result is reached in the determination of the differences between the parties in this case.

B2 Whether you agree with the law as I will give it to you or not, you must accept the law for the purposes

of this case and may not disregard it or substitute any of your own ideas. You are duty bound to follow the law as given to you in these instructions.

On the other hand, it is your duty to find and your exclusive province to decide what the facts are. You determine the facts from all the evidence you have heard and the exhibits that have been introduced, but in your consideration of the evidence you are not limited to the bare statements of the witnesses. You are not limited solely to what you hear and see as the witnesses testified. You are permitted, in addition, to draw from the facts and circumstances which you find have been proved such reasonable inferences or conclusions as seem justified in the light of your general experiences.

You are the sole and exclusive judges of what the facts are. In that field you are supreme. Neither I nor anybody else may invade your province.

At times during the trial I have excluded documentary exhibits from evidence, sustained objections to questions asked without permitting the witness to answer, or, where an answer was made, instructed that it be stricken from the record and that you disregard it and dismiss it from your minds. You may not draw any inference from an unanswered question, nor may you consider testimony which has been

stricken in reaching your decision.

The law requires that your decision be made solely upon the competent evidence before you. Such items as I have excluded from your consideration were excluded because they were not legally admissible.

The process by which you arrive at a verdict is to determine what the facts are and then you apply the rules of law which I have mentioned during the trial and in this charge to the facts as you find them. Your conclusions will be your verdict.

Anything the lawyers may have said or argued to you or questions they have asked is not to be substituted for your recollection of the evidence. So, too, anything that I might say during the trial or refer to in these instructions as to any matter of evidence is not to be taken in lieu of your own recollection. You determine the weight of the evidence, you appraise the credibility or worthiness of belief of the witnesses, you draw the reasonable inferences from the evidence and resolve such conflicts as there may be in the evidence.

The testimony of a witness may fail to conform to the facts as they occurred because the witness did not accurately see or hear; or because his recollection is faulty; or because he has not expressed himself clearly; or because

he is intentionally telling a falsehood.

There is no magical formula by which one may evaluate testimony. You jurors bring with you to this courtroom all the experience and background of your own lives. In your everyday affairs you determine for yourselves constantly the reliability or the unreliability of statements made to you by others. The same tests that you use in your everyday dealings are the tests which you apply now in your deliberations in the jury room.

A word about the credibility of witnesses. The interest or lack of interest of any witness in the outcome of the case, the bias or prejudice of a witness, if there be any, the appearance, the manner in which the witness gave testimony on the stand, in short, his demeanor, the opportunity that the witness had to observe or know the facts concerning which he testified, the probability or improbability of the witness' testimony when viewed in the light of all the evidence in the case, the corroboration or lack of corroboration of the testimony by other evidence in the case through witnesses or circumstances or documents or probabilities, these are all matters which may properly be taken into your consideration in determining the weight you will assign to the testimony of any witness.

However, bear in mind, it is not the number of

witnesses which counts. It is the quality not the quantity of the evidence which has been adduced. What did they testify to bearing on the issues you must decide? If such considerations make it appear to you that there is a discrepancy in the evidence you will have to consider whether the apparent discrepancy may not be reconciled by fitting the two stories together. If, however, that is not possible, you will have to determine which of the conflicting versions you will accept.

If you find that any witness has willfully testified falsely as to any material fact, the law permits you to disregard completely the entire testimony of that witness on the principle that one who testifies falsely about a material fact is quite likely to testify falsely about everything. You are not required, however, to consider such a witness as totally unworthy of belief. You may, if you wish, accept so much of the testimony of the witness as you deem true and disregard what you feel is false or misstated.

If you disbelieve the testimony of any witness, that doesn't permit you to find to the contrary of what he has testified to unless there is independent direct or circumstantial proof from which to find the contrary. Even where the jury might disbelieve the testimony of a witness it is not at liberty to use that disbelief to find the

opposite of what the witness testified to in the absence of independent direct or circumstantial proof of that opposite. This means that if you disbelieve the testimony you may disregard it, but to find the contrary you are required to have indirect or circumstantial proof which you credit to the contrary.

B3 There are essentially two lawsuits here to be considered, both arising out of a verbal altercation initiated by Mr. Perez on March 24, 1975 following the World Heavyweight Championship fight between Mr. Ali and Chuck Wepner, the fight that was refereed by Mr. Perez. Mr. Perez and Mr. Ali are suing each other in connection with words uttered by each of them in the aftermath of that fight.

Additionally, Mr. Ali is provisionally suing ABC and ABC Sports claiming that only if it is determined that Mr. Ali is liable to Mr. Perez in damages, then ABC and ABC Sports are liable for contribution by reason of their actions in broadcasting Mr. Ali's comments furnished to Howard Cosell concerning Mr. Perez which had been videotape recorded by Cosell the day before they were broadcast.

B4 The undisputed chronological sequence of events herein appears to be as follows:

On March 24, 1975, immediately after the Ali-Wepner fight, Mr. Perez attended a press conference where

he was asked by the reporters some questions regarding rabbit punching during the fight. He testified that he responded that he saw them by both sides. Mr. Perez says that the reporters also asked why he had scored a knockdown of Ali in the 9th round. The reporter told him that Ali claimed that he did not get knocked down.

To this Perez responded that there had been a clean knockdown and that Ali had tripped on his own foot.

Thereafter, on the following day, March 25, Mr. Perez made the following public statements of and concerning Mr. Ali:

"He (Ali) purposely did the rabbit punching. Chuck did not do it. If there was one man who fought dirty last night, I think it was Ali.

"A clean knockdown. Ali tripped on his own feet but he went down from the effect of the punch, in my opinion. He's just embarrassed because a man like Wepner knocked him down."

Three days later on March 28, 1975, Mr. Perez, in a telephone talk with a television reporter, Howard Cosell, of ABC Sports, who was preparing a broadcast on the fight, told Cosell that Ali outdid Chuck Wepner in rabbit punching, and by this he tells us in his testimony before trial, which was read to you here, that he meant that Ali threw more

rabbit punches than Wepner, and, did it purposely and flagrantly.

Mr. Perez thereafter in his pleading in this case filed on April 15, 1975 further stated as set forth the following.

"Throughout the bout, defendant Muhammed Ali was holding Wepner and hitting him at the same time, and putting his elbow into Wepner's throat and fighting dirty and contrary to the rules and regulations.

"The battle lasted almost a full 15 rounds with Wepner scoring a clean knockdown of defendant Muhammed Ali in the 9th round.

"After the knockdown, it appearing that it was defendant Muhammed Ali's intention to kill Wepner for having knocked Muhammed Ali down, accordingly, in the 15th round, plaintiff Perez herein stopped the bout, Wepner being in no condition to continue with Muhammed Ali falling flat on the floor from exhaustion upon the ending of the contest.

"Defendant Muhammed Ali stated subsequent to the Ali-Wepner fight that he would see to it that plaintiff was prevented from refereeing additional heavyweight boxing matches and would preach - as he has done - a sermon of hate throughout the world against the plaintiff Perez herein."

Mr. Ali claims that Mr. Perez' comments in March

and April of 1975 were false and defamatory of and concerning Mr. Ali and were made by Mr. Perez with actual malice, and that they injured Ali's reputation in the professional boxing field.

Following the Perez statements to the press of March 24 and 25, and to Cosell on March 28, Mr. Ali was interviewed for television by Howard Cosell in connection with the Perez statements, the Ali-Wepner fight and the events of the 1974 Frazier fight. Mr. Perez was the referee in both the 1974 Frazier and in the 1975 Wepner fights.

In the Cosell interview Mr. Ali stated the following, which was then televised and broadcast in the ABC Wide World of Sports program on March 29, 1975 between 5:00 o'clock and 6:30 p.m.:

"I had the man" -- referring to Frazier -- "knocked out and he was almost ready to fall and he" -- referring to Perez -- "stopped it and said the bell rung and made a mistake and the damn bell didn't ring, messing me up from knocking out Joe Frazier. I had Joe Frazier going and the world saw it and he" -- referring to Perez -- "stopped the fight and said go to your corners pretending he thought the bell had rung. That wasn't it.

"He didn't want me to knock out Joe Frazier.

"They got lights on the poles Bundini just said -

got lights on the pole to show -- the round wasn't over. He didn't see no lights. He was paid probably by some gangsters or somebody or he had some money bet on Joe Frazier."

Mr. Perez claims that the words uttered by Mr. Ali were false and defamatory of and concerning Mr. Perez and were uttered with actual malice and injured his reputation.

Under our law, a person's good reputation in his business or profession is held in high regard and when it is falsely attacked or disparaged the law grants him the right to bring a libel action to recover damages.

However, if the statement is true, then no matter how damaging a statement may be to a person, the speaker has an absolute defense. He is not liable.

Another qualification to recovery of damages is that where the complaining party is a public official or a public figure and the allegedly libelous statement falsely reflects on his reputation, abilities or conduct in his business, or profession, then the complaining party must, in order to recover, prove with convincing clarity -- note those words, with convincing clarity -- that the libel was published with actual malice and injured his reputation.

Let us first define the term libel for which I will sometimes interchangeably use the word defamation.

A libel is any false accusation which dishonors

or discredits a man in the estimate of the public or his friends and acquaintances, or has a reasonable tendency to do so, or deters third persons from dealing or associating with him. Only a statement of fact can be libelous. An essential element necessary for recovery for defamation is the existence of a falsehood as to a fact, a historical fact. Words used in a loose, figurative sense, such as a rhetorical hyperbole or a vigorous epithet, are not representations of fact, and, cannot be a basis for a defamation suit.

B5

You, as jurors, must determine whether those who heard or saw Perez' comments about Ali, or Ali's comments about Perez, would have understood the speaker to be making a representation of a fact, or merely to be engaging in exaggerated rhetoric.

Was the language or the words used understood by an ordinary listener in their bad sense or only as rhetorical expression? For example, I am sure that many of you are familiar with sports events and probably have heard people accuse umpires with the rhetorical expression of being "blind." In such circumstances no reasonable person would understand the words to mean that the speaker was saying that the umpire had suffered a malady of the eyes, such that he could not, in fact, see. That is an example of a rhetorical expression, not historical fact.

Now, going to the next point in this case, you are to consider both of the complaining parties as within the category and definition of public figures. The parties have so stipulated. This means that the statements of each were made on a privileged occasion. It is not enough to entitle a recovery by a public figure to show that what was said about him was false as to a fact. The law is that a public figure may not recover damages for defamatory words in the absence of proof by him -- and he has the burden of proof to show -- by clear and convincing evidence that the statements were made by the speaker with actual malice. If actual malice was missing there can be no recovery against the speaker.

The qualified privilege against liability to a public figure is recognized by the law in order to maintain our constitutional freedom of speech. It is important that the conduct of public officials and of public figures be open to an uninhibited, robust, and wide-open debate, even though some of that discussion turns out to be false and derogatory.

However, the qualified privilege which saves a speaker from liability for false and derogatory remarks made about a public figure does not extend to a false and defamatory statement of fact if it is made with actual malice.

Actual malice is a term of art. Actual malice

for the purpose of this suit is to be found where the statement is made with knowledge by the speaker that the statement he is making is false, or is made by the speaker in reckless disregard of whether it is false or not.

To repeat, you may hold a speaker liable in this case only if you find that he made a factual statement with actual knowledge of the falsity of his remarks whether they be opinions or representations of fact or with reckless disregard for the truth.

The phrase, "reckless disregard for the truth" needs further explanation. It means that the speaker had a subjective awareness -- that means a personal awareness -- of the likelihood that his statement was false. There must be sufficient evidence from which to conclude that the speaker ascertained serious doubts as to the truth of his statements. Those doubts may be established either by direct evidence or by circumstantial evidence from which a reasonable inference may be drawn that the speaker had such doubts. Speaking with such doubts shows reckless disregard for truth and it demonstrates actual malice. However, to find "reckless conduct" it is not sufficient for third parties to say that a reasonable man would have investigated further before speaking as he did. There must be proof in the case as to the participant of such reckless disregard for truth or falsity

as to demonstrate actual malice.

Consequently, it is the rule that standing alone, actual malice is not proved or inferable by any one of the following: Negligence, failure to investigate, ill-will, bias, spite or prejudice. The rule is that there has to be knowledge that the statement which is made is untrue or reckless indifference to whether it was true or false.

I wish also to make clear that reckless disregard is not the same thing as carelessness in making a false statement of fact. Thus, actual malice is not established by showing merely that a reasonable man would have known the statements were probably false, or even that this particular speaker should have known that the statements were probably false.

To hold a speaker liable, as I have said, it is necessary to find that he was actually aware of the truth or of the likelihood of the falsity of the statement.

This is not to say, however, that a speaker must automatically be held not liable merely because he testified that he spoke with a belief or opinion that his statements were true. It is for you to determine whether the statement was indeed made under a belief or opinion entertained in good faith.

I would like to mention the right to reply of

one who is verbally attacked by another. The law recognizes a further special qualified privilege to defend one's self against defamatory statements made by another. When a right of reply exists, we refer to the occasion as a privileged occasion. In this case the comments made by Mr. Ali followed remarks directed at him by Mr. Perez. Mr. Ali allegedly viewed Mr. Perez' remarks as an attack on Ali personally and professionally.

In addition to the privilege of free speech as to a public figure, which we have already discussed, Ali claims a privilege to defend himself by reply, so you must determine whether the privilege of reply protects Ali.

To find that the privilege of reply excuses Ali's comment about Mr. Perez, Mr. Ali has the burden of satisfying you by a fair preponderance of the credible evidence of the following:

(1) That the remarks of Mr. Perez which initiated the verbal bout were libelous, as that term was previously defined;

(2) That Mr. Ali's remarks were related to the comments of Mr. Perez or were made to attack Perez' motives for making his remarks; and

(3) That Mr. Ali's reply was not excessive. A reply which is excessive for the occasion which goes beyond

the reasonable bounds of a fair, relevant retort to a provocation loses the privilege of reply as a defense to a defamation.

If you find that Mr. Ali's comments were protected by the privilege of reply and were not excessive under provocation therefor, you must still go further and decide whether that privilege was overcome by malice. Proof of malice of one who replies overcomes the right of reply.

Ali's statement was made on a privileged occasion, the occasion of reply. It is presumed that it was made in good faith. The burden is upon Mr. Perez to show that in making the statement Mr. Ali acted with malice.

Malice as here used would include spite or ill-will as well as knowledge of the falsity of what is said or reckless disregard for the truth in saying it. To overcome the privilege of reply, the burden is on Mr. Perez to prove by a fair preponderance of the credible evidence that the reply was actuated not merely to defend but was actuated by malice.

If Ali's purpose in making the statements was not honest criticism or if Ali acted solely out of spite or ill-will towards Mr. Perez, or if Ali's reply was excessive for the occasion, the privilege of reply is overcome.

If you find that the privilege of reply was applicable and it was not destroyed by malice or excessive-

ness, you should for that reason find Mr. Perez cannot recover from Mr. Ali because of such privilege. So there are two privileges that you must consider as to Mr.Ali, the privilege to speak about public figures, without actual malice, and the privilege of reply without malice as I have defined the words for you in respect to each privileged occasion.

The right of reply cannot be claimed by Mr. Perez because it was he who initiated the verbal bout. He was not replying to any comment by Ali.

However, he, like Mr. Ali, may be protected by the privilege to attack a public figure if you find that his remarks were not untrue to his knowledge and not in reckless disregard of the truth, that is, not with actual malice.

Mr. Perez, as referee, was speaking of the fight with direct knowledge and you will test his statements accordingly. Mr. Ali has acknowledged that he has no direct proof that his comments about Mr. Perez were true. To support his beliefs he relies on circumstantial proofs. He has offered evidence of the events and circumstances and the opinion testimony of his witnesses, Jacobs and Dundee, to indicate the basis of his own statement and belief, and he claims that his remarks were in good faith based thereon and were not with actual malice.

There are, generally speaking, two types of

evidence from which a jury may properly find the truth in the facts of the case. One is direct evidence, such as the testimony of an eyewitness or a participant. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence of non-existence of certain facts.

In order to prove a fact by circumstantial evidence, there must be positive proof of some fact which, though true, does not itself directly establish the fact in dispute but does afford basis for a reasonable inference of its existence.

The fact or facts upon which it is sought to base an inference must be shown and not left to rest in conjecture, and, when shown, it must appear that the inference drawn is the only one that can fairly and reasonably be drawn from the facts and that any other explanation is fairly and reasonably excluded.

(Continued on next page.)

ewrf 4 am 1

A common example will enable you to see what I have just been saying. This is given to juries to illustrate circumstantial evidence.

Suppose at the time that you came into court this morning the sun was shining and there were no clouds in the sky, and when you came into this trial courtroom the shades were drawn and the blinds were down so that you couldn't see outside. Pretty soon someone came through that door, walking into the courtroom with a dripping umbrella and a dripping raincoat.

You have been busy in the jury box and haven't been outside in the meantime. When you left outside it was clear, but this person or persons came in with their dripping umbrellas and raincoats, so maybe something happened outside. You would be entitled to infer from the circumstances that there is a dripping umbrella and a raincoat that it is raining outside.

Thus, circumstantially, you infer from a fact the dripping raincoat and umbrella, some other matter, the rain outside. The mind is led circumstantially from a fact or series of facts to reach another fact or series of facts.

That will give you an illustration of what circumstantial evidence is and what it might lead to.

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It is not necessary that the ultimate facts in this case be shown by direct evidence. The ultimate fact may be inferred from such facts and circumstances in evidence as legitimately tend to sustain that inference. It is entirely up to the jury to determine what, if any, inferences should be reasonably drawn from the facts and the circumstances presented to you in the evidence.

I turn now to a different subject, the subject of damages.

Ladies and gentlemen, you are aware, of course, that neither of the complaining parties has offered any proof that he sustained actual out-of-pocket loss or damages as a direct result of what he claims to be the defamatory statements of the other.

Nevertheless, if you find for a complaining party on the issue of liability, the law permits you to compensate that party by awarding damages for injury to his reputation and any mental anguish, and if it has been proved, any loss of business or professional income, resulting from the defamatory remarks.

Incidentally, the law does not permit a complaining party to recover damages attributable to any loss of reputation or mental anguish of members of either complainant's family. There has been no contention that

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there was proof of loss of income in business or boxing activities presented here by either complaining party.

My charge to you on the law of damages must not be taken as an intimation that you should find for a complaining party here. It is given to you because I have no way of knowing how you are going to decide the issues of liability. It is for you to decide on the evidence presented and the rules of law I have given you whether a complaining party is entitled to recover from the other party to his complaint.

If you decide he is not entitled to recover, you need go no further; your verdict will be for the one defending against the claim. Only if you decide that a complaining party is entitled to recover will you consider the measure of damages.

If you find that a complainant is entitled to recover, you will award him such amount as in the exercise of your good judgment and common sense you find is fair and just compensation for the injury to the complainant's reputation and the humiliation and mental anguish in his public and private life which you find was directly and actually caused by the defending party's statement.

In fixing that amount, you should consider complain-

ewrf 4

ant's standing in the community, the nature of the defending party's charge against him, the extent to which the charge was circulated, the tendency of the charge to injure such a person as complainant and all of the other facts and circumstances surrounding the parties. Such damages cannot be proved with mathematical accuracy. Fair compensation may vary from nominal damages of six cents if you find the injury to have been slight, to a substantial sum if you find the injury to have been substantial.

As bearing on the amount of compensatory damages to which a complainant will be entitled, if you find for a complainant, it is apparently claimed on each side as to the other party that his reputation and standing in the community at the time of the statement was so high that only slight, if any, damage could have been caused by the statement. In arriving at your verdict for compensatory damages, you will take into consideration so much of the evidence offered by both sides bearing upon reputation at the time the statement was published as you find believable, and with respect to that part of your award relating to damages to reputation you will fix such amount as you find to be commensurate with the injury in fact suffered by the complainant to his reputation.

If you find that reputation was damaged by the

ewrf 5

statement you may include in your award for compensatory damages not only damages for injury to reputation, but also such additional sum for humiliation and mental anguish as you deem fair.

If you decide that Mr. Ali is entitled to damages from Mr. Perez, the elements of the damages allowable in that defamation case may not include any recovery for the alleged physical injuries which Mr. Ali may have suffered.

The only elements which may be considered in respect to either complainant in this case will be those I have already mentioned, that is damage to reputation, humiliation and mental anguish.

The damages I have discussed with you so far are called compensatory because they are intended to compensate for such injury as you find was done to reputation and feelings and business if the qualified privileges do not stand up.

In addition, each complainant asks that you allow him punitive damages. Punitive damages are allowed to punish a defendant who has acted maliciously and to deter others from the commission of similar acts.

If you find that in making the statement about the complainant the other party acted maliciously, you may, but are not required to, award the complainant punitive

ewrf 6

damages. The burden of proving that the other party acted with malice is upon the complaining party.

If your finding is that the defending party's statement was not made with deliberate intent to injure and was not made in reckless disregard of its truth and its effect upon the complainant, you may make no award for punitive damages.

If you find that in making the statement the defending party was motivated by deliberate intent to injure the complaining party or acted in reckless disregard of the truth and the effect of the statement upon him, you may award punitive damages.

The amount you fix as punitive damages need bear no particular ratio or relationship to the amount you will award as compensatory damages. There is no exact rule upon which you determine the amount of punitive damages. You may fix such amount as you find, in your sound judgment and discretion, the character of the malice calls for in order to punish the defending party and to deter others from similar acts. In reporting your verdict, you will state separately the amount, if any, fixed by you as compensatory damages and the amount, if any, fixed by you as punitive damages.

Mr. Perez' legal complaint in this court repeats

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some of the statements that Ali alleges are defamatory. If the jury considers that there was actual malice on Mr. Perez' part in the sense of a desire to injure Mr. Ali, in the filing and publication and the repetition of the defamatory remarks in the complaint, this may be considered in its bearing on punitive damages if the jury is considering the same.

Finally, ABC and ABC Sports are not being sued by Mr. Perez in this case. If and only if you find for Mr. Perez against Mr. Ali, you must then consider Ali's claim against ABC and ABC Sports. ABC and ABC Sports can be held liable for contribution to Mr. Ali, only if you find that they broadcast Ali's comments on their Wide World of Sports program knowing them to be false or with reckless disregard of whether they were false. That is, you must apply the same standards of actual malice to determine whether ABC and ABC Sports were protected by the privilege to criticize public figures that you applied to Ali and Perez.

If you find that ABC and ABC Sports broadcast Ali's remarks knowing them to be false or with reckless disregard of their truth, you must apportion damages you award to Perez between Ali and the other parties. That is, you must decide what portion, expressed in percentages,

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of the damages Ali is to bear and what portion ABC is to bear and what portion ABC Sports is to bear of any compensatory award, if any, to Mr. Perez based upon the relative degree of culpability or fault you feel is attributable to each of those defending parties.

ABC and ABC Sports cannot be held liable for any punitive damages in this case.

Coming now to the conclusion of my charge, I point out to you that a verdict to be acceptable as to any claim you have considered and decided must be a unanimous verdict to be reported by you through your foreperson, Mrs. McComb, the lady who sits in the first seat, in the following form:

If you determine that a complaining party has not succeeded on his claim, you should simply report that on that complaining party's case, naming him, you find for the defending party, naming him.

If you find liability to exist, you will name the one held liable and to whom, and if for compensatory damage, how much, and if for punitive damages, how much.

Mrs. McComb will receive a paper and pencil from the marshal, and if you feel it is necessary to communicate with the Court, please do so only in writing signed by your foreperson. You, of course, may request

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for any part of the testimony that you wish to hear again -- it may be read to you -- or to see any of the exhibits that you would like to see again.

Bear in mind that it is not easy to pick out particular portions, so if you would be specific with any such request, it will facilitate the prompt furnishing of the requested material.

I should like to take a few moments to talk to the lawyers. They may wish to call to my attention that I may have overlooked something that I should talk to you about or may have misspoken, so if you would be kind enough to relax in your seats, I will take them into the other room where they can tell me of anything that they have to say.

(Conference in robing room.)

THE COURT: Are there any exceptions on the part of the plaintiff?

MR. SULLIVAN: Yes, your Honor.

The first exception is in the marshaling of evidence as to the undisputed part that Mr. Perez initiated the attack based on the fact that during the fight Muhammed Ali, as has been testified to, called Perez names. Howard Cosell indicated that Muhammed Ali's opponent in the ring was Tony Perez, that he had taken Tony Perez on, and

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accordingly it is our claim that it is not undisputed that Mr. Perez initiated the verbal attack.

We would also --

THE COURT: You say that Ali called Perez names in the fight and what else did he do?

MR. SULLIVAN: Well, he hit him and he -- which his general conduct -- Mr. Cosell stated over the air that Mr. Ali had taken Perez on and had spent most of his time fighting Perez as opposed to Wepner.

I would also, in that same light, object to the part of the word "assault" as far as initiating the verbal assault since it is our contention that what Perez said was in no way an assault on Ali. I might be mistaken upon this, but in that light I don't think that I heard the charge as to Perez' right to fair comment and to render his opinions.

THE COURT: Did you submit one?

MR. SULLIVAN: I believe so, your Honor. I heard it from Ali --

THE COURT: I don't remember any such request. Get me the papers.

MR. SULLIVAN: Your Honor, just a second. My associate tells me that we did not submit such a charge, but I would submit --

ewrf 1

THE COURT: If you didn't submit a request of charge on fair comment, this is not the time to go into it.

MR. SULLIVAN: May I just make a short statement, your Honor?

THE COURT: I want the exceptions now. You can make your statements later. Are there any other exceptions?

MR. SULLIVAN: Yes, your Honor. I object to the characterization of the comments in the complaint as a republication. I also --

THE COURT: Do you mean to say that the same information was not restated, inceed restated and amplified, is that your point in fact?

MR. SULLIVAN: I believe the complaint is based on information and belief, your Honor, signed by the attorneys,and I don't think it should be a republication.

THE COURT: Do you mean to say that the plaintiff does not accept responsibility for the complaint?

MR. SULLIVAN: No, I am not saying that, your Honor. I object to the charge as to fair comment and opinion on the part of Muhammed Ali, whether or not we submitted a request to charge on fair comment and opinion, if the charge is given on behalf of Muhammed Ali. I think

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it is not proper to leave it out as far as Tony Perez is concerned. If it was given for Ali, certainly the general charge must have been submitted by Mr. Ali's attorneys, but if that charge was submitted in your Honor's marshaling of the facts around that charge, I believe it also should have applied to Mr. Perez.

THE COURT: I hardly marshaled the facts, but go ahead with your statement.

MR. SULLIVAN: Yes, your Honor.

Finally, in your Honor's mentioning of the sequence of things that are given, it was an undisputed, your Honor said, sequence of what had happened. However, your Honor mentioned a telephone call by Howard Cosell which was not claimed in Ali's complaint or anything of the kind, and left out all of Ali's comments at the press conference. There was no mention made of any of Ali's comments at the press conference, your Honor, in your statement of what had happened.

THE COURT: Ali's comments? Weren't they all broadcast?

MR. SULLIVAN: Yes, your Honor, they were.

THE COURT: Of course I did. I had a separate section stating that those were the very things that Mr. Perez was complaining about.

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MR. SULLIVAN: I understand, your Honor. I am talking about in your Honor's initial mention of this as the sequence of how it happened your Honor stated that Perez' comments at the press conference started it, and then Perez' phone call, and then Ali's comments on the show, but nothing about Ali's comments at the press conference.

THE COURT: I will read it to you. You are completely wrong about that. Following Perez' statements to the press of March 24th and 25th and Cosell on March 28th, Mr. Ali was interviewed for television by Howard Cosell.

MR. SULLIVAN: Yes, your Honor, but I am talking about the press conference, Ali's press conference right after Perez just a couple of minutes thereafter.

THE COURT: What press conference, what are you talking about? Tell me, what date are you talking about and what press conference you want me to include.

MR. SULLIVAN: The day of the fight, your Honor. Two minutes after Perez' press conference Ali made a few statements to the press --

THE COURT: Show me where that is in the record, or show me whether that is an extrapolation on your part. Give me the record.

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MR. SULLIVAN: Your Honor, the tape was played --

THE COURT: Please, don't keep flipflopping and waffling all over the lot. You said there was something in the record of a press conference with Mr. Ali. I want to give that information to the jury, if there is any such thing in the record. My recollection is, having read the record thoroughly over the weekend, that there is no such thing. You find it for me at this point.

MR. SULLIVAN: Your Honor, I will try to find it.

THE COURT: You better do better than try to find it. You better find it or withdraw your statement.

MR. SULLIVAN: I would like to state, your Honor, that --

THE COURT: Please do what I have asked you to do, and then you can reserve all your argument until later. I want to know the exceptions. I want to know whether there is any proof of a press conference given by Ali following the fight on March 24, 1975.

You will mark the plaintiff's request to charge as Court's Exhibit 20.

(Court's Exhibit 20 marked for identification.)

xx

THE COURT: And also plaintiff's supplemental

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request is marked Court's Exhibit 20-A marked for identification.

(Court's Exhibit 20-A marked for identification.)

xx

THE COURT: Are you aware, Mr. Sharfman, of any such passage in the record in this case?

MR. SHARFMAN: No, sir. I reviewed the record this weekend also.

THE COURT: Let's go on, Mr. Sullivan. Apparently, you haven't been able to find any such evidence in the record.

MR. SULLIVAN: I have nothing further, your Honor.

MR. SHARFMAN: I take it, your Honor, to the extent that we didn't give the charges that we submitted, we have an objection as to those or do I take it incorrectly?

THE COURT: Any request that was submitted that hasn't been given in substance or effect is deemed denied.

MR. SHARFMAN: I think that's the answer to my question, your Honor, thank you.

MR. ELDRIDGE: That's true for all parties, I presume, sir?

THE COURT: You are in the case, too.

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MR. SULLIVAN: Your Honor, I point to page 243 of the testimony on October 13, 1976. I state that it really starts on page 22 -- line 22, I'm sorry.

THE COURT: In the Perez redirect testimony to which you have called attention he was questioned on recross examination by Mr. Sharfman as to whether he had seen the tape of the Fazier fight prior to the time of this trial, and he stated that he never saw the tape other than in connection with the lawsuit.

In other words, what you have done is to divert me from your point.

MR. SULLIVAN: Your Honor, that doesn't say the Frazier fight, I don't think. I am not trying to divert. I think it says as to the tape that the jury just saw. They are not talking about the Frazier fight there. They are talking about the taped conference which apparently wasn't taken down by the reporter.

THE COURT: What do you mean? Do you mean this record is false, is that what you are saying now?

MR. SULLIVAN: No, I am not saying it is false.

THE COURT: Are you saying this trial record is inadequate?

MR. SULLIVAN: I am not trying to say that, your Honor. I played the press conference.

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THE COURT: You are not careful at all in your speech. I have something to say to you about something you said in summation, too.

MR. SULLIVAN: If I may just summarize --

THE COURT: You called my attention to page 243 as something that you say related to the events immediately after the fight showing that there was something in the record concerning a speech made by Ali to press reporters, and there is just nothing on page 243 in that connection.

MR. SULLIVAN: May I try to refresh your Honor's recollection.

THE COURT: Are you calling my attention to page 243, or are you calling my attention to some other thing you are flitting to now?

MR. SULLIVAN: 243 and something else that I am flitting to, your Honor.

THE COURT: Show me what else you are flitting to. Show me the page.

MR. SULLIVAN: It is a continuation on 244 where it shows that the exhibit we are talking about now is Exhibit 4, the Frazier fight was Exhibit 2. I am not talking about --

THE COURT: What you are saying to me is you

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are referring to Exhibit 4 and Exhibit 4 has nothing whatsoever to do with a conference that Ali is supposed to have had with the press on March 24, 1975.

Now what are your other exceptions?

I don't want to hold this jury up endlessly while you are trying to make up your mind as to something that doesn't exist.

What other exceptions have you got?

MR. SULLIVAN: That's it, your Honor.

THE COURT: Are there any exceptions on the part of the Defendant Ali?

MR. SHARFMAN: No, other than as to what we have submitted.

THE COURT: Are there any exceptions on the part of ABC?

MR. ELDRIDGE: On behalf of ABC and ABC Sports I would except to so much of the charge that with respect to the claim over by Ali which said that the actual malice element in support of the claim was that of ABC or ABC Sports because I believe it should have been stated in terms of the actual malice of the persons responsible for the publication at ABC and ABC Sports as opposed to just a corporate designation.

THE COURT: Anything else?

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MR. ELDRIDGE: Yes, sir. I except to that portion of the charge which fails to afford to the ABC defendants a privilege of reply as a basis for defeating the Ali counterclaim. As I understood the charge, the Court made the privilege of reply defense to the libel only applicable to Ali, and thus did not afford the corporate defendants --

THE COURT: You don't claim that Cosell was replying to Perez, do you?

MR. ELDRIDGE: No, sir, but I do claim --

THE COURT: I get your point. You made your point.

Anything else?

MR. ELDRIDGE: Yes, sir. I would except to that portion of the charge wherein the Court, if I understood the charge correctly, stated that if the jury found that Ali's statements were matters of comment and opinion, they could be defeated by proof of actual malice.

I submit that the rule is that if the jury finds that those were comments and opinions, rhetorical hyperbole, hyperbole, as your Honor suggested, that those are absolutely privileged under the Constitution and are not --

ewrf 20

THE COURT: They are not libelous. I didn't say what you said, but I understand your point.

MR. ELDRIDGE: All right, sir, that is the exception there.

Then I would except to that portion of the charge that would permit a recovery against Ali, and in turn potential recovery over where the Court said that the negligence, ill will, failure to investigate bias and prejudice alone are insufficient on the basis that no one of them collectively even would support actual malice.

THE COURT: No one of them collectively?

MR. ELDRIDGE: Not one, but collectively they would not support actual malice as defeasing them the First Amendment right.

THE COURT: I am not going that far. This invades the province of the jury.

MR. ELDRIDGE: Also, your Honor, I would except to that portion of the charge that provided, in effect, that there is not a reasonable -- there must not be a reasonable relationship between a compensatory and a punitive award in the case.

THE COURT: Anything else, Mr. Eldridge?

MR. ELDRIDGE: No.

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THE COURT: Mr. Sharfman?

MR. SHARFMAN: No.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: Yes, your Honor, from pages 242 through 247, it becomes clear that what was played was the tape of Muhammed Ali right after Perez. Of that interview, the tape was played. I individually remember it clearly, and I request your Honor's permission to go and get Exhibit 4 and try to find it because --

THE COURT: Mr. Sullivan, several times during the trial you tried to divert the proceedings by rushing off to have something played. Well, let it stand as it is. There is no taped record of any interview of Ali with the press on March 24, 1975 in this case. Your statement to me was that I failed, in reciting the chronology, to mention an interview on March 24th immediately after the fight. There is nothing in words in the record on that subject, and there is nothing in pictures on that subject. I do intend to deal with the subject of fair comment and of opinion in giving the jury further instructions.

All right, gentlemen.

(In open court.)

THE COURT: Thank you for your indulgence,

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ladies and gentlemen. I should add, for the sake of completeness, that in connection with who initiated and what provoked the respective comments of the parties, you should also consider what, if anything, occurred or was said by the parties to each other during the course of the Wepner fight itself, if that bears on that subject.

If I used the word assault, it was a colloquialism and not intended to mean anything more than the propulsion of words in somebody's direction.

I would also call to your attention that Mr. Perez' claims that his statements constituted nothing more than fair comment concerning a matter of public interest.

If what he had to say constituted fair comment as the law defines that term, then no matter how injurious his statements were to Mr. Ali, he was privileged to publish those statements, and Mr. Ali could not recover from him unless in publishing those statements Mr. Perez acted maliciously. A statement is one of opinion rather than fact if, under all the circumstances it would be understood by an ordinary person of average intelligence as a statement of opinion rather than a statement of fact. Facts are truly stated if they are stated with reasonable accuracy, so that there is no substantial

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difference between the statement and the truth. A statement of opinion is fair if it is related to the acts or matters which are being commented upon and is one which a reasonable man might honestly entertain, based on the facts truly stated.

The fact that you may disagree with a comment or that it appears wrong to you does not make it unfair if the opinion it expresses is one that a fair-minded man might reasonably entertain based on the facts truly stated.

That completes the matters that I have to call to the jury's attention.

The next order of business is that having arrived at the point of which the jury will deliberate, I now will excuse from further participation in the case the alternate jurors, Mr. Paccione, Mr. Maybury and Mr. O'Donnell, and they are excused from further service in this case. The clerk has your certificates of service, and if you will step down, he will give them to you and you may leave.

Thank you, you are excused from further service on the jury.

(Alternate jurors excused.)

The next item of business is to swear the marshal.

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(Marshal sworn.)

THE COURT: Mrs. McComb, the first order of business for you, together with the other ladies and the gentlemen on the jury, will be to go out to lunch.

The marshal will provide for your lunches at the expense of the Government. He will see to it that you will be taken to an appropriate restaurant where, I hope, the food will be appropriate, and after you have dined and supped or whatever it is, you can return and begin with your deliberations. You will be in his custody during that period of time.

Thank you very much.

You may go out with the marshal.

(Jury excused.)

THE COURT: There remains yet another matter which I would like to call to your attention.

During the course of the summation of the lawyer for the plaintiff, my recollection is that he made the statement in referring to the testimony of the party -- of Mr. Ali, that that testimony was dreamt up by a lawyer. That is a direct accusation of professional impropriety, and the Court will await the receipt of the trial record to see exactly what the context of it was and what it stated before taking any action in connection

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with it.

We are now in recess, and we may stand in adjournment until 2:30.

(Time 1:10 p.m. luncheon recess.)

(Jury returned from lunch and started deliberations 2:30 p.m.)

(3:00 p.m., note received from the jury.)

(In the robing room.)

THE COURT: I have a request from the jury which reads, and this is Court's Exhibit 21, "May we please have a statement of the charges made by the Judge to the jury."

(Court's Exhibit 21 marked for identification.)

xx

THE COURT: I suggest that in response to that I send them a note that the charge has not yet been transcribed, and if you desire any specific portion or the whole of it reread to you by the reporter from her notes, please advise.

Is there any objection to that?

MR. ELDRIDGE: No, sir.

MR. SULLIVAN: No, sir.

THE COURT: The second request that they ask for is the statement made by Perez to the press conference.

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I have, in response to that, taken out that paragraph and sent my clerk up to have a Xerox so that that particular thing will be back here, and I will show it to you before we send it in.

MR. SHARFMAN: There is testimony in the transcript on that by Mr. Perez --

THE COURT: Please. They said they want the statement made by Mr. Perez to the press conference. That's what they are going to get, nothing more and nothing less.

THE COURT: Just read back to me what I was going to say in response to the first request. We will mark this Court's Exhibit 22.

Please state on the record whether you approve of Court's Exhibit 22.

MR. SULLIVAN: Plaintiff approves of Court's Exhibit 22.

MR. ELDRIDGE: Defendant ABC and ABC Sports approve of Court's Exhibit 22.

MR. SHARFMAN: Defendant Muhammed Ali agrees to Court's Exhibit 22.

THE COURT: Do you agree to Court's Exhibit 23?

MR. SULLIVAN: Plaintiff agrees to Court's Exhibit 23.

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MR. SHARFMAN: What is the question?

THE COURT: Do you approve of it going to the jury in this form?

MR. SHARFMAN: Yes, sir, I do agree.

MR. ELDRIDGE: Third Party Defendants ABC and ABC Sports have no objection to Court's Exhibit 23.

THE COURT: The clerk is instructed to hand the jury Court's Exhibits 22 and 23 in response to that question on Court's Exhibit 21.

MR. SHARFMAN: Your Honor, there were other statements made.

THE COURT: They weren't asked for.

(Court's Exhibit 23 marked for identification.)

THE COURT: I guess that takes care of that for the moment.

(Court's Exhibit 24 and 25 marked for identification.)

(3:30 p.m. a note received from the jury.)

(In open court, jury present.)

THE COURT: I am not quite clear as to the meaning of part of this last note. I will read it to you so that the lawyers can hear it at the same time.

We request the actual charges to the jury

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that we are to deliberate on.

There seems to be a period there. I will come back to that in a moment.

"How do I present our verdict, the format as stated in the last section of your charge."

The last part is easier to answer than the first part. The format is this: When you have reached your verdict, you may write down on a piece of paper, so that you can hand it to the clerk of the court when you are called into court, the information will cover the following, it doesn't have to be in any set form, but this is what it is to cover:

If you determine that a complaining party has not succeeded on his claim, you should simply write down that on that complaining party's case, naming that person, you find for the defending party, naming that person.

If you find liability to exist against a defending party, you will name the person for whom, in whose favor you find and against whom you find, and if you find any damages you will state so much for compensatory damages, if you find any, and so much for punitive damages, if you find any. That can be from zero to the number that you find as I have indicated,

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or six cents in the case of compensatory damages.

Does that clarify in your mind the form of the verdict?

JUROR NO. 1: Thank you, yes.

THE COURT: The fore-part of your question is do you want the entire charge reread to you?

MRS. MC COMB: No, we would like the last section of that charge that states the questions that the jury is to deliberate on, there are two or three sentences there.

THE COURT: Is that on the liability section or the damage section?

JUROR NO. 1: The liability section.

THE COURT: The liability section.

Let me run through the course of the charge, and you stop me when I have come to a part that you want to re-hear. This will just kind of give you an index to the charge. I have my notes, but we don't have the actual charge to be read to you by the reporter because, although these are notes, this is not the verbatim charge as taken down by the reporter.

You are to be governed by the verbatim charge. My notes will help me help you find the place you want.

In the forepart of the charge, I have the

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respective functions of the Court and the jury. Then I have the matter of credibility of witnesses, then the next item goes to that there are essentially two lawsuits here, and I described each of the two lawsuits in the briefest terms. The sequence of events as augmented by the last part where I told you to consider not only what happened after the fight, but also during the fight; then I go on to instruct you on the law in respect to libel.

Is that the part that you are talking about?

JUROR NO. 1: No.

THE COURT: The definition of libel, that only a statement of fact can be libelous, that both parties are public figures and what the law is as to a public figure and then what actual malice is and what reckless disregard for the truth is; then the right to reply, and when that exists and how it is to be found and what privilege arises from the right to reply and how the statements are to be regarded and the offers of direct proof and circumstantial evidence and then the subject of damages.

Have I come to the point that you want reread?

JUROR NO. 1: Yes, the last part.

THE COURT: -- the difference between direct

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and circumstantial evidence and that either may be used to establish the fact, is that the part, or is it before that?

JUROR NO. 1: I think that's it, isn't it?

THE COURT: Suppose what I do is to have the reporter -- is what you are asking for related to the subject of a reply?

JUROR NO. 1: Yes.

THE COURT: Suppose we turn to that part of it?

Would you, Miss Reporter, please look at your notes where I started out to say I would now like to mention the right to reply of one verbally attacked by another and see if that is the portion of it.

JUROR NO. 1: No.

THE COURT: Is it after that or before it?

JUROR NO. 1: It is after that.

THE COURT: After the privilege of reply, the next subject was that right of reply could be claimed by Ali if the conditions were met, and it could not be claimed by Perez unless he was replying also, and then following that I instructed you on direct and circumstantial evidence and how that is arrived at, and then I turned to the subject of damages.

Have I gone too far?

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JUROR NO. 1: I think that in your reviewing that that we have --

THE COURT: You think you don't have any questions any more?

JUROR NO. 1: Yes, I think that's enough.

THE COURT: If any question arises in your mind, and if my instructions are not clear in your mind and you want some specific instructions on something after you talk it over again, perhaps you will send me another note.

JUROR NO. 1: Thank you.

(3:45 jury left courtroom.)

THE COURT: That last note from the jury is marked Court's Exhibit 26.

(Court's Exhibit 26 marked for identification.)

xx

Perez

mcds 1

(Jury present at 4:10 p.m.)

Tkl p.m.

THE CLERK: Madam Forelady, have you agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: How do you find?

THE FORELADY: Do I read it?

THE CLERK: Is it written out?

THE FORELADY: Yes, we wrote it out.

THE CLERK: Just hand it up, please.

"The jury has decided against the complainant, Tony Perez, in the case against defendant Ali," and it is signed "Ruth McComb, Forelady."

THE COURT: Poll the jury.

(In answer to the question "Is that your verdict as I have just read it," all jurors answered in the affirmative.)

THE COURT: Mrs. McComb, that answers one part of the case. That answers the case of Perez against Ali. Now I'm going to ask you to retire again to report on the case of Ali - the second case - against Perez which was not included in the statement, and when you come to a decision, a verdict on that, you let us know.

The first verdict you reached is accepted. Now, you retire and let us know what your verdict is on the other

case.

(The jury retired at 4:12 p.m.)

THE COURT: The jury's verdict on the complaint of Tony Perez against the defendant Ali is marked Court Exhibit 27.

xx (Court Exhibit 27 marked for Identification.)

MR. SULLIVAN: May I make motions now, your Honor, to save time?

THE COURT: Why don't you wait until we get a report.

MR. SULLIVAN: All right.

THE COURT: On the basis of that partial verdict, the complaint is dismissed.

(The jury returned to the courtroom at 4:15 p.m.)

THE CLERK: Mrs. McComb, have you agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: "The jury has decided against the complainant Ali in the case against the defendant Perez," signed Ruth McComb.

(In answer to the question, "Is that your verdict as I have just read it?" all jurors answered in the affirmative.)

THE COURT: Ladies and gentlemen, that concludes

your service in this case. I want to thank you very much for your care and attention to the case. It seems to me that you rendered a very wise and justified verdict.

You are now excused. The clerk will give you your certificates. Thank you very much.

(The jury discharged.)

THE COURT: The verdict on the counterclaim of Ali against Perez is marked Court Exhibit 28.

xx (Court Exhibit 28 marked for Identification.)

THE COURT: On the basis thereof the counterclaim of the defendant Ali against the plaintiff Perez is dismissed, and the third-party claim-over of the defendant third-party complainant against the third-party defendants ABC and ABC Sports is dismissed. That concludes the case.

MR. ELDRIDGE: Your Honor, with respect to the third-party defendant's counterclaim which was subject to a motion earlier under Rule 41A --

THE COURT: My ruling on that is that that counterclaim is dismissed for failure of proof.

MR. SULLIVAN: Can I make my motion?

THE COURT: Yes.

MR. SULLIVAN: Plaintiff Perez moves to set aside the verdict in the case of Perez against Ali as being against the weight of the evidence and against the law.

THE COURT: The motion is denied. The verdict is eminently justified on the basis of the evidence and circumstances and the conflicts within the evidence were resolved by the jury in all respects as against all parties.

Do you have any motions?

MR. SHARFMAN: I make a motion for the direction of judgment on the verdict for Mr. Ali against Mr. Perez on Mr. Perez' claims.

THE COURT: A verdict in a jury case is automatically referred to the clerk on judgments and an appropriate judgment dismissing everybody's claim will be entered.

MR. SHARFMAN: Thank you, sir.

THE COURT: Good night.

* * * *

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Elizabeth White

Official Court Reporter
U. S. District Court

Mort. Cohen

PLAINTIFF'S EXHIBIT 4 FOR IDENTIFICATION.

The following is a duly certified transcript of Plaintiff's Exhibit 4 for identification, the tape of the press conference which followed the Wepner-Ali fight:

ALI: I know the man was a good scuffler. This is why I laid on the ropes and did my own routine. He punched himself out. I was surprised that he did not punch himself out a lot but he kind of wore himself down. This is my style. I fight my own fight, train my own fight way so I am unmarked and I won. . .

WEPNER: He is a great champion and he is a great fighter. I feel no shame in losing to Myhammad Ali.

PEREZ: I let him get up. I count him 9, 8. I count him 9 he was up. I let him get together. I tried to clean his gloves but he was out, he was rubberlegged. He wanted to hold on himself, if I let Ali hit one more time I'd be responsible maybe for something disgraceful. . .

Question by press of Perez: The question was, give us the inside of what happened in Ali's corner?

PEREZ: I don't know.

(Question repeated)

PEREZ: No, I don't know. I saw him on the floor, maybe he was resting. I don't know what happened. I went straight to my card. The fight was over and I was just trying to do my job.

(Other information given to press)

Question by press of Ali: What other fighters were easier than this?

ALI: Foreman was easier. Norton was easier up until the last two rounds.

Question by press: Why was he so tough?

ALI: Because he is a good awkward fighter. Better than you gave him credit. All of you. . . Not all of you. But I think if you will follow my career, what experts and newspapers say, of me nothing; Jergens-Berlin in Germany, fought him in Zurich, Switzerland, Jergens bled. Cossell they say he was not worth putting on television. He gave me a rough 7 rounds.

PLAINTIFF'S EXHIBIT 4 FOR IDENTIFICATION

Al Blue Louis, Dublin Ireland, he say he was nothing, ne was not worthy, he gave me a rough 11 rounds. First Ken Norton fight. He was not worth it. He beat me. This man was a joke. I didn't pay no attention to you. I worked.

Question: Were you shocked at being knocked down?

ALI: I'll tell you this, let's look at the replay. Play it in slow motion, see if I got knocked down. I don't get knocked down.

Question: What happened?

ALI: What happened is he held his toe.

Question: What happened at the end of the fight?

ALI: Too many fools jumping into the ring. I always lay down. I laid down in the Foreman fight (someone said did he step on your foot). No, I laid down immediately.

(ALI is explaining) - His foot was sort of on my toe and I could not pull out from under him. . . I have been down but never counted out. So that in itself is an accomplishment to me.

(There is yelling in the background)

ALI: That's Chuck's wife, she has a right to holler. My wife didn't want me whipped either. After the fight when Norton beat me, my wife gave karate on five (5) policemen. She passed out.

Question by press: What type of job do you think Perez did?

ALI: Perez is a guy on the spot. He is not white nor black. He's Puerto Rican. He's trying to be white. He's a dirty referee. I never want that man to referee another one of my fights. That's right. He's dirty all over the world. That man hit me on my head all the time. He didn't say nothing. So I told you that I take the law in my own hands and hit him back. I hit him back and he stops me - dirty dog. I don't never want that Perez in my damn corner - never want him - dirty dog.

I had Joe Frazier, I had Joe Frazier knocked out. I had Joe Frazier knocked out and he didn't even see it. He pretended the bell rang. . . . I don't fight in barrooms. I wouldn't fight. I would shoot a man before I fight him - I'll cut him. Black people cut you.

Question by press: . . . he gave Ali a chance when Ali came back. He wonder when Ali will give him a chance.

PLAINTIFF'S EXHIBIT 4 FOR IDENTIFICATION

ALI: Frazier gave me a chance. He gave me a chance for 2-1/2 million. Anybody. . . I'll fight Frazier. But Ellis did to him- Ellis went 11 rounds with him. I'll burn Frazier up now. All they got to do is come on up with the 10 million - 10 million. He'll get it. I got 8 for George. You want to see him more than George. They going to get me 8 for George. It's bad to let a man, especially a white man fight a man like me and just let him continue and you'll get the films. My head is hurting, my whole neck is hurting. I got 2 lumps back here.

He's a dirty referee and they just kept letting him do it. That's bad. And you know what I did to him, you saw me try to kill him when he was falling. I usually pull off a man when he is on the ropes, when his hands were down and I tried to knock his head off. That's dirty letting him fight me dirty. I try to kill him.

That's right. Jerry Quarry was in a position - I backed off. Ellis was in a position - I backed off. Buster Mathis was in a position - I backed off. All Blue Louis was in a position, George Foreman was in a position, was right in my face - I could have rammed him but this man fought me dirty all the way and he let him fight me dirty and his hands were completely down and you never saw me do that in my life. I try to annihilate him for letting them fight me dirty like that. I had no mercy for him. Not beat on him that unjustly. (break)

They let themselves because of the peoples jumping in. I don't want to push him off of me. It's too tiresome. I tell you what I bet you there is very few human beings on this planet earth that could go 15 rounds like that.

Question by press: Who are you going to fight next?

ALI: Working on Bugner, Europe champion, European champion.

Question by press: . . . . . .

ALI: You can't tell an airplane pilot on up in the cockpit and tell him how to handle a plane in a violent thunderstorm. See this thing is not a movie. It's not rehearsed, its real, and you have to map your own plans and map your own route and do what has to be done and I have been blessed, cause you can see.

All the juice is gone - I want to go somewhere and do nothing (break in tape)

Question by press: Ali, did he have to rabbit punch in in order to last 15 rounds with you?

ALI: No. I don't know, he is just real out to win the fight. He's hungry - he is a liquor salesman. He did get but $100,000.00 - I don't do exhibitions for that. His managers all of them hungry, they need money and its scuffling. He was butting too. He was getting his head and butting. He tried to kick me one time; I fell and brought my foot here (indicating where).

PLAINTIFF'S EXHIBIT 4 FOR IDENTIFICATION

The referee didn't say nothing. I could see that in the Jack Johnson days, doing all that racist activity. You don't do that nowadays. You don't allow them kind of things to happen nowadays with the world. Because I am going to talk about him. I'm going to preach this sermon to every Moslem Temple I go, every college. I am going to spread it and they're going to watch it. I am protesting against the referee (unintelligible). I'm out to get the referee. I'm going to campaign against him. I'm going to go all across to Harlem, to Watts, I'm going to get films and show it to people. I'm going to make it a big issue. There's not going to be any more dirty racism - racism.

Question by press: Was that a TKO in the last round?

ALI: They call it a TKO. . . . Thank you.

PLAINTIFF'S EXHIBIT 4 FOR IDENTIFICATION

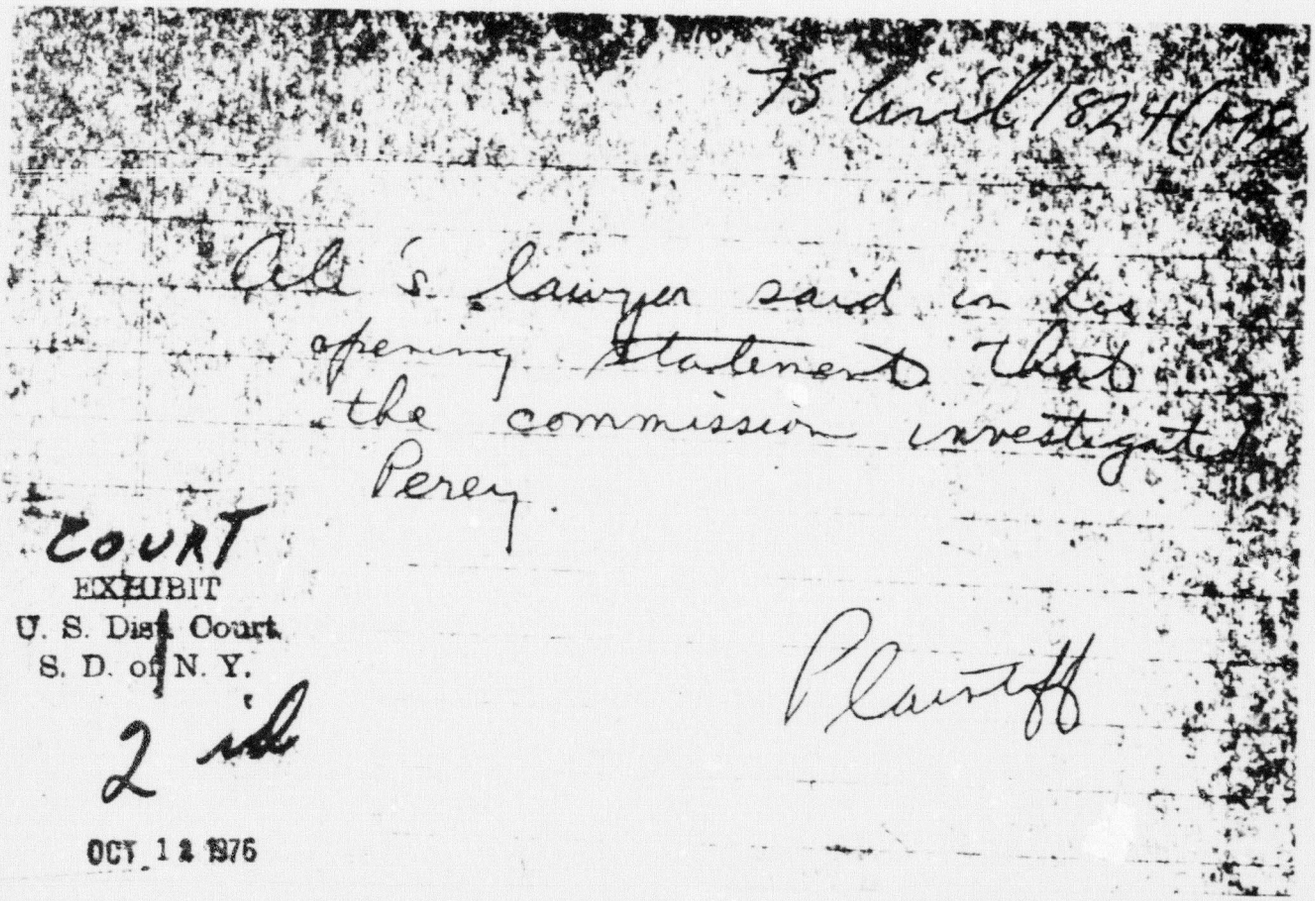
STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice in the State of New York and before the United States District Court for the Southern District of New York and the Court of Appeals for the Second Circuit, does hereby certify pursuant to Section 2105 of the Civil Practice Law & Rules that I compared the within transcript and found it to be a true and complete transcript of Plaintiff's Exhibit 4 for identification.

Dated: February 1977

ROBERT G. SULLIVAN

COURT'S EXHIBIT 2 FOR IDENTIFICATION.



75 Civil 1824 (PKL)

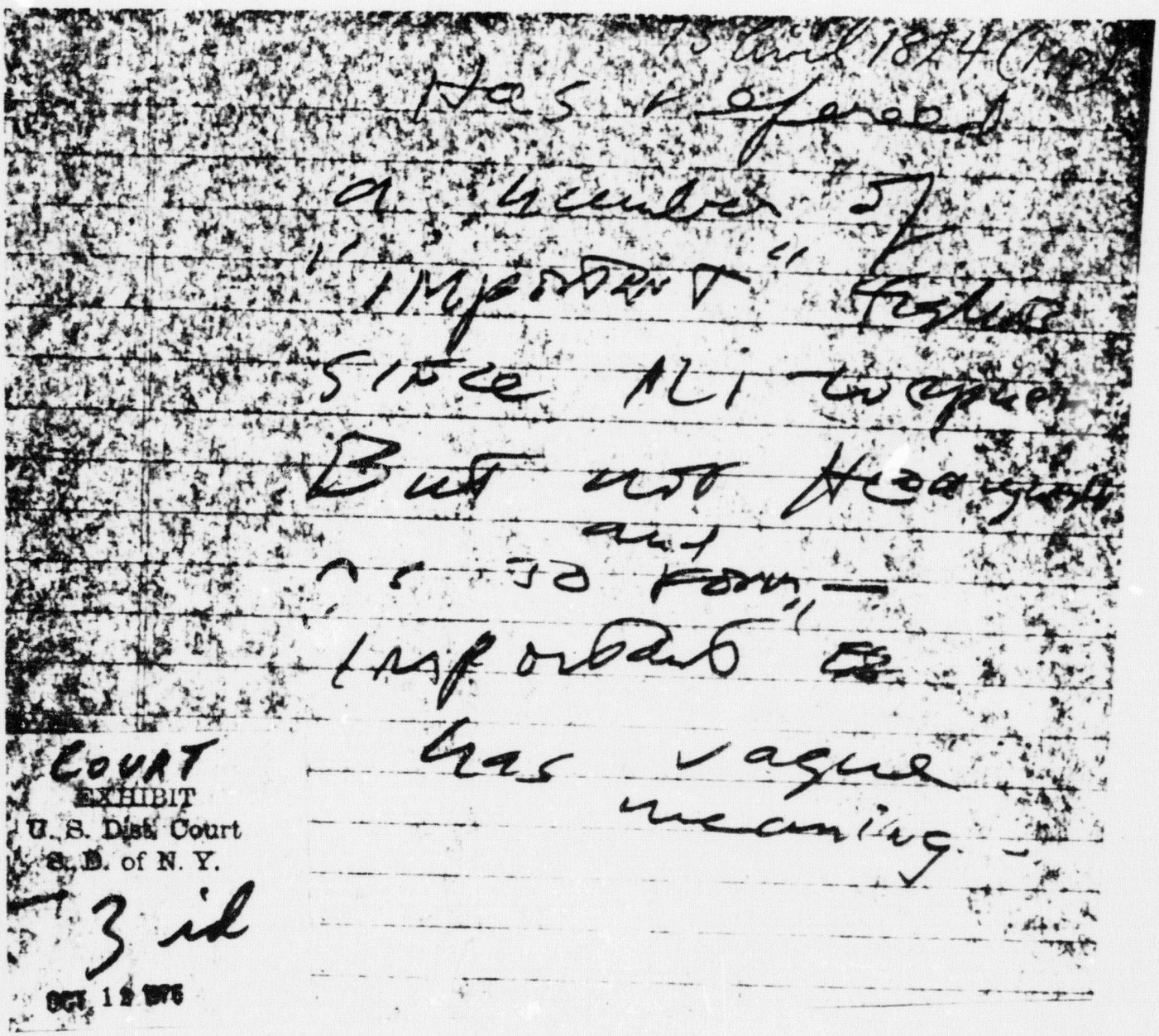
Def's lawyer said in his opening statement that the commission investigated Perez.

Plaintiff

COURT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
2 id
OCT 12 1976

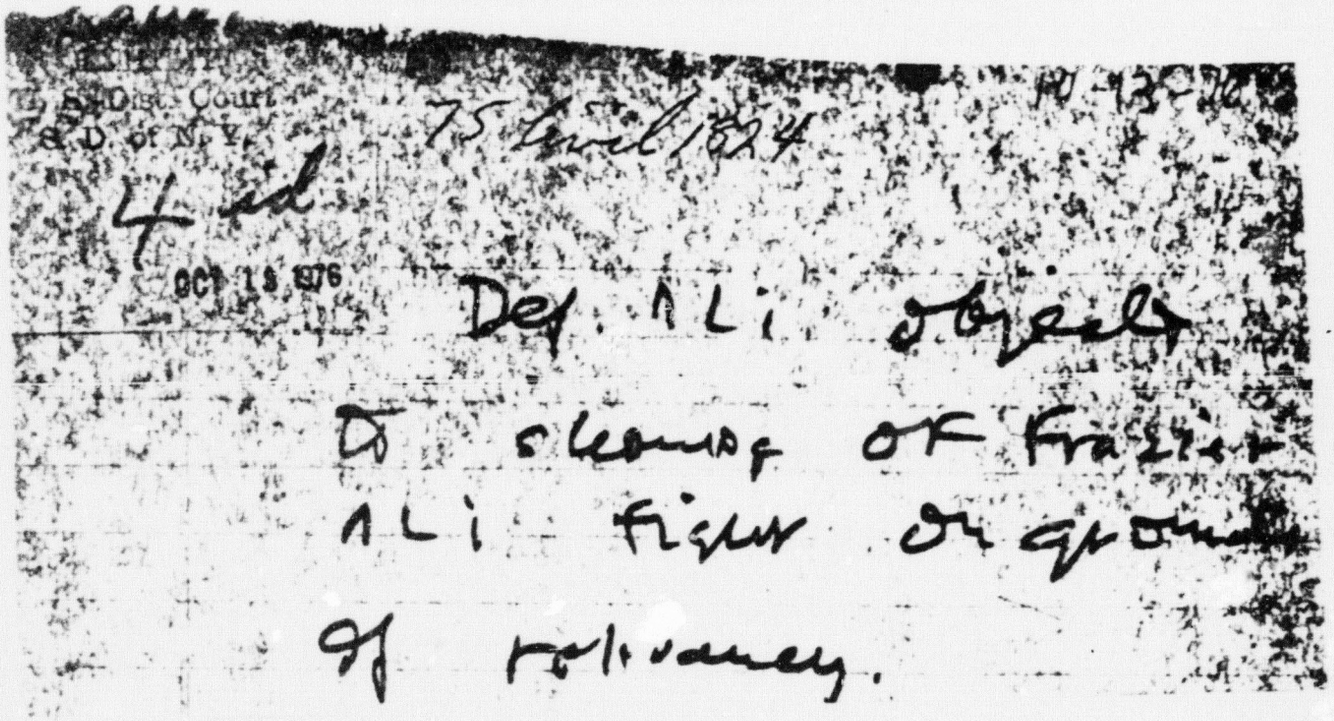
BEST COPY AVAILABLE

COURT'S EXHIBIT 3 FOR IDENTIFICATION.

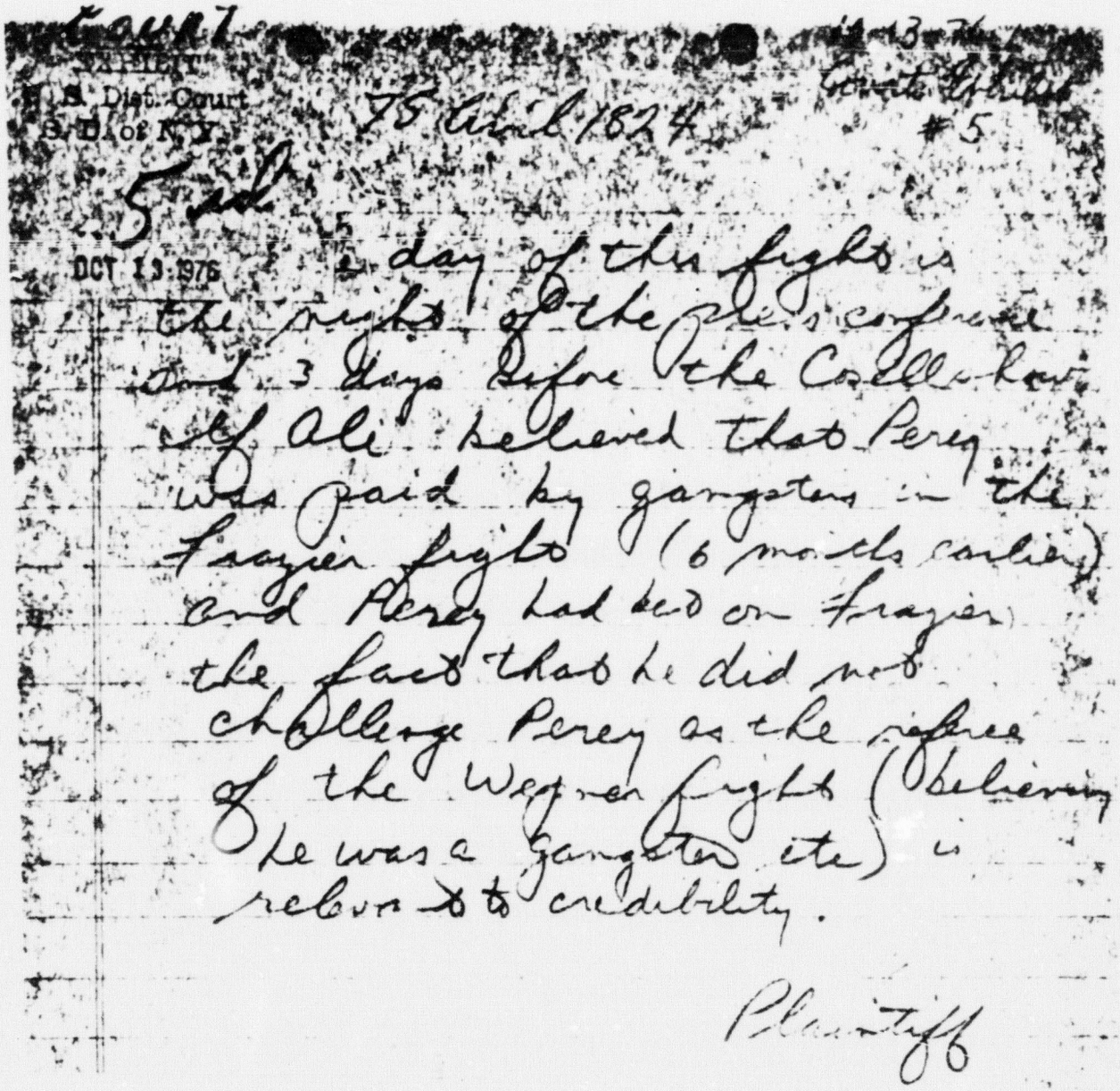


COURT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
3 id
OCT 12 1976

COURT'S EXHIBIT 4 FOR IDENTIFICATION.



COURT'S EXHIBIT 5 FOR IDENTIFICATION.

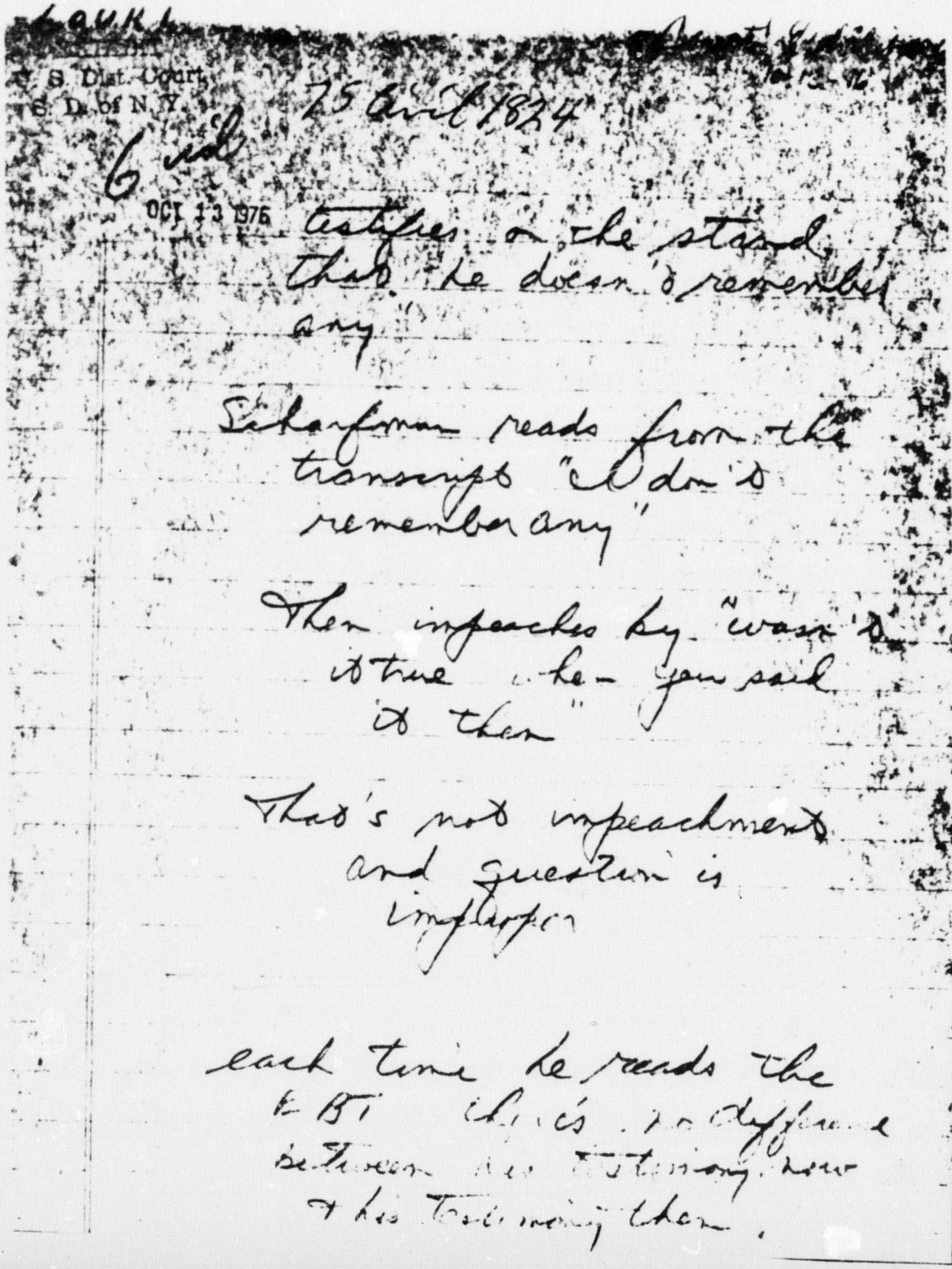


Court
U.S. Dist. Court
S. Dist. of N.Y.
DEC 13 1976
Exhibit
#5
DEC 13 1976

5th day of this fight is
the fights of the pleas conference
3 days before the Collusion
of Ali believed that Perey
was paid by gangsters in the
Frazier fight (6 months earlier)
and Perey had ded on Frazier
the fact that he did not
challenge Perey as the referee
of the Wepner fight (believing
he was a gangster etc) is
relevant to credibility.

Plaintiff

COURT'S EXHIBIT 6 FOR IDENTIFICATION.



25 April 1824

6 cdd

testifies on the stand that he doesn't remember any

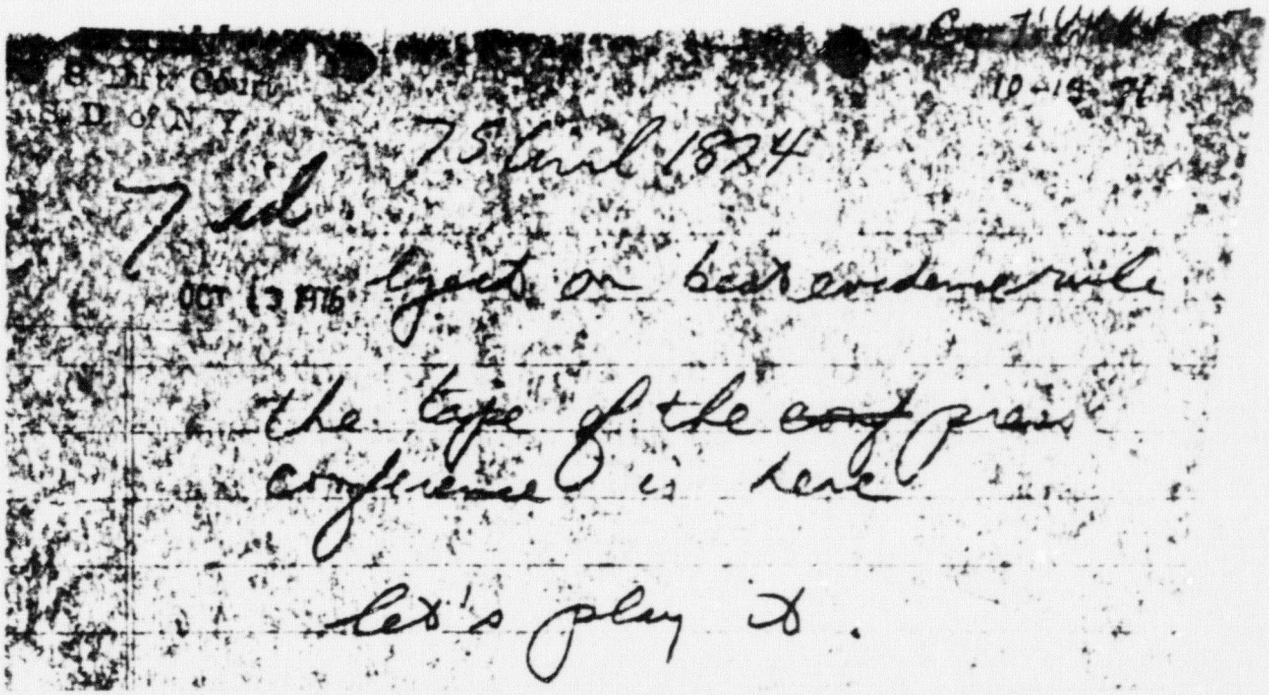
Scharfman reads from the transcript "I don't remember any"

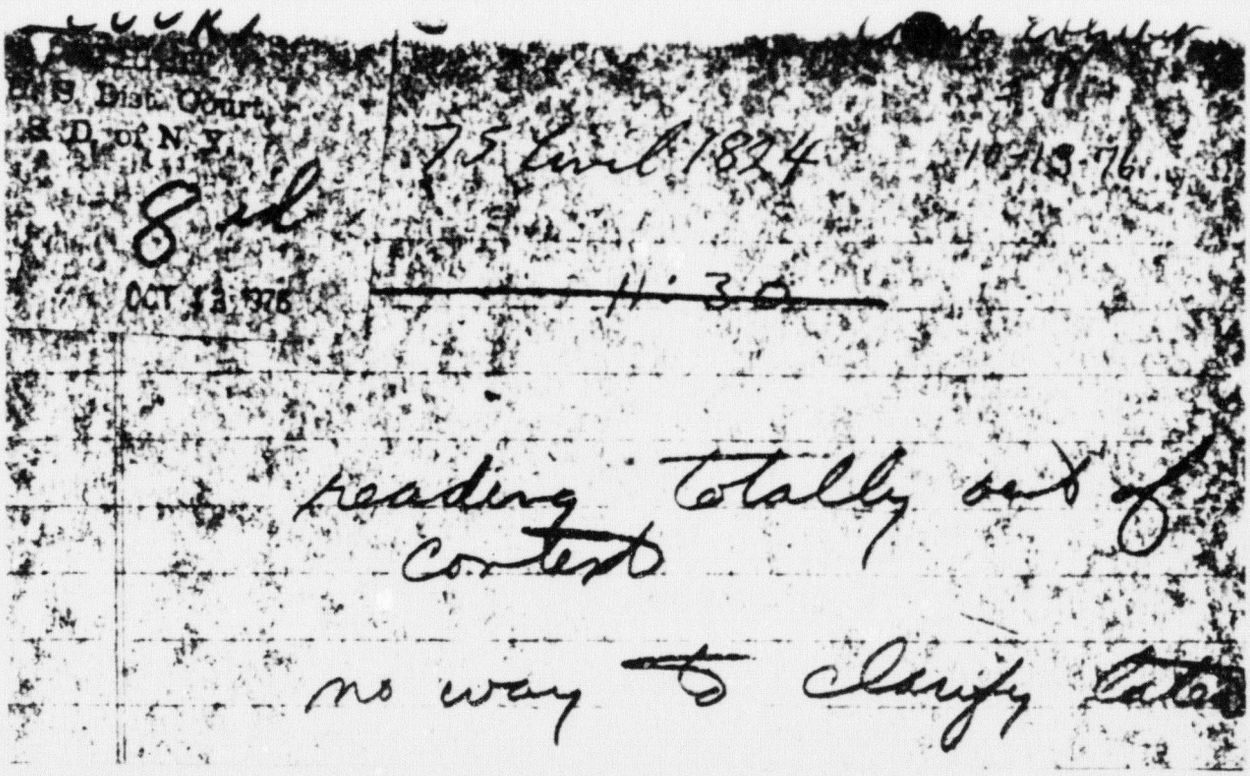
Then impeaches by "wasn't it true that you said it then"

That's not impeachment and question is improper

each time he reads the FBI notes, no difference between his testimony now & his testimony then.

COURT'S EXHIBIT 7 AND 8 FOR IDENTIFICATION.





COURT'S EXHIBIT 9 FOR IDENTIFICATION.

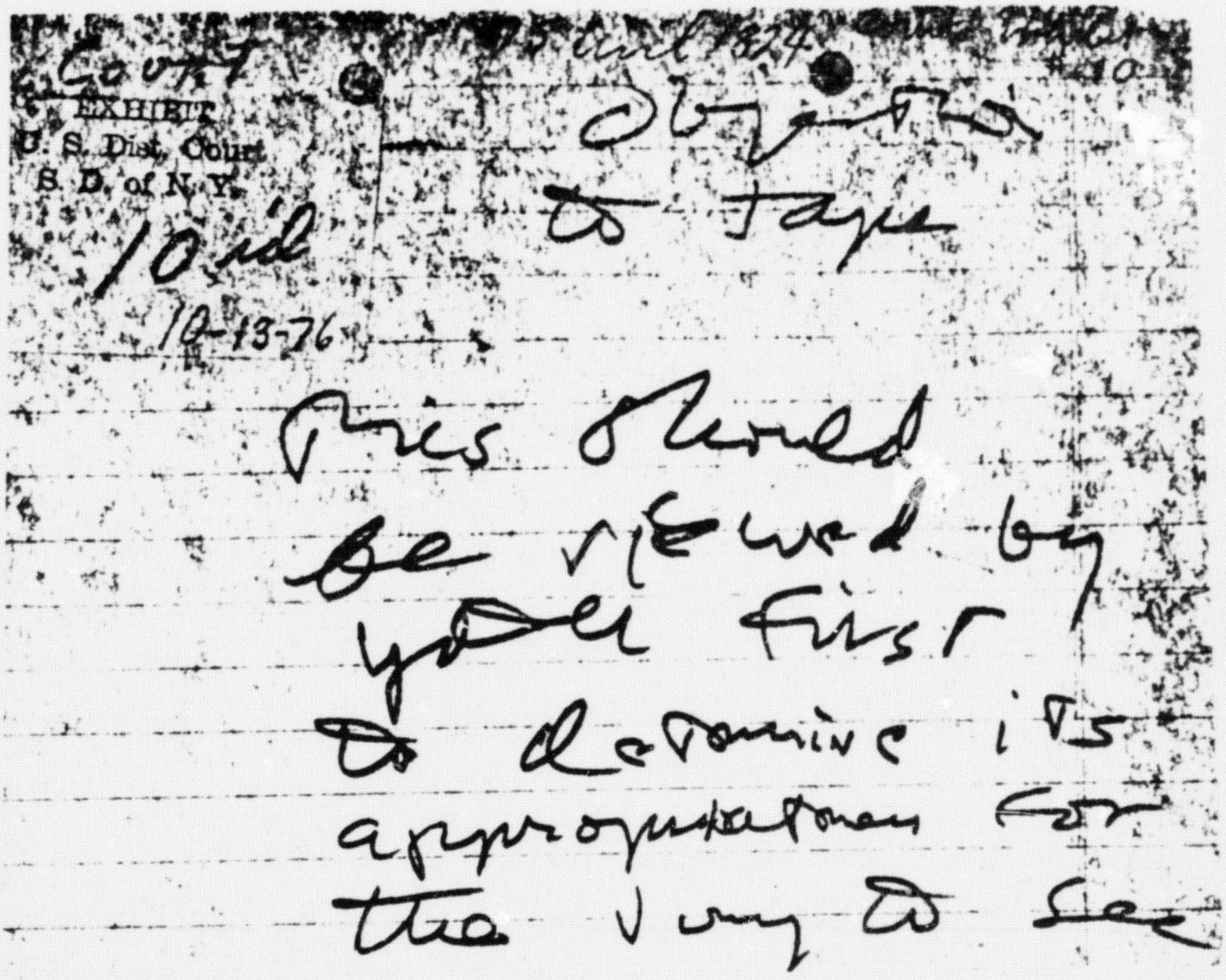
Plaintiff respectfully moves for a mistrial and the withdrawal of a juror based on your Honor's question

COURT EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
9
10-13-76

OCT 13 1976

75 Civil 1824

COURT'S EXHIBIT 10 FOR IDENTIFICATION.



COURT'S EXHIBIT 11 AND 12 FOR IDENTIFICATION.

75 Civil 1824

Objection to production of Tape #15 —, except as limited to Perez' testimony.

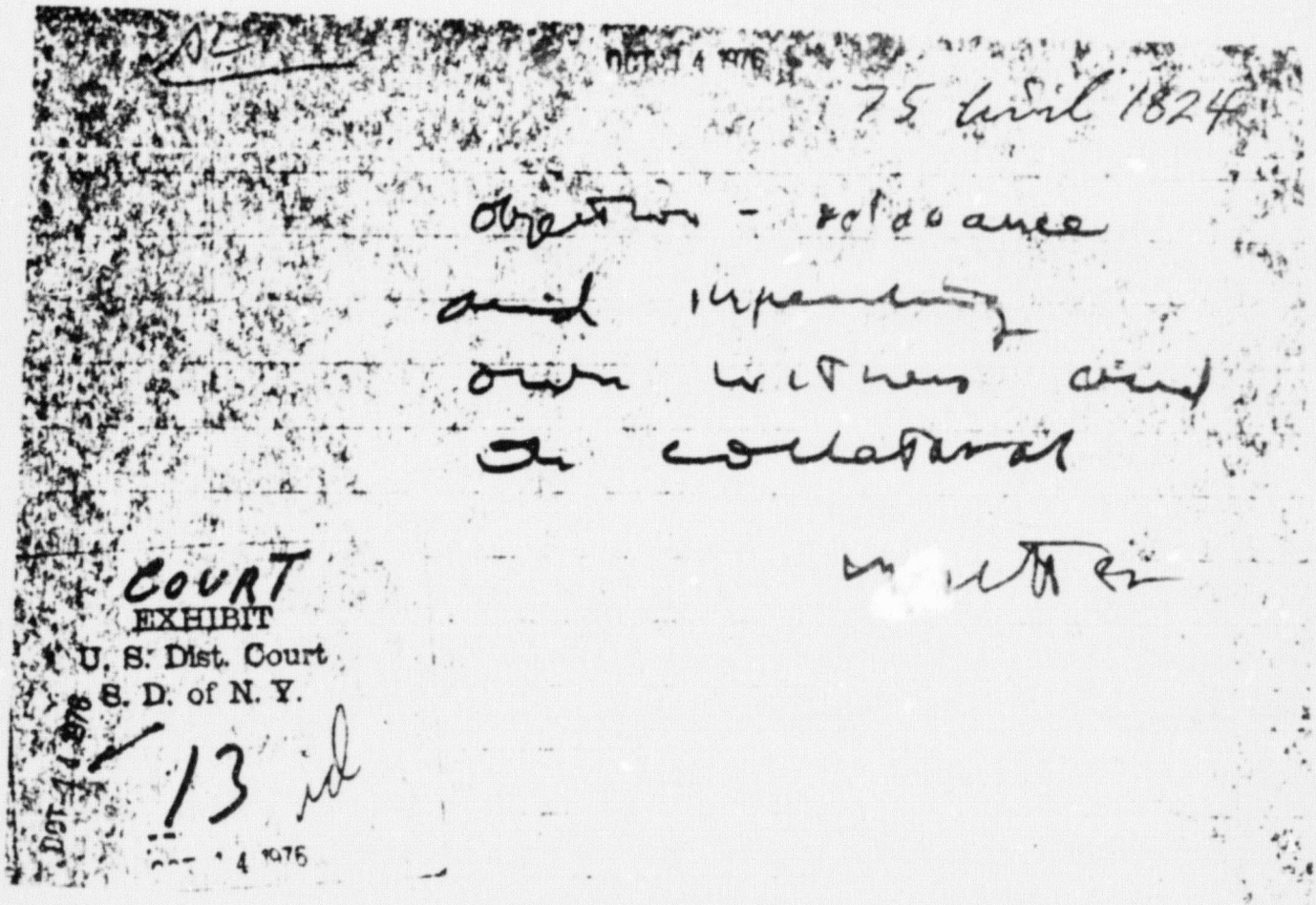
COURT EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
11 id
10-13-76

75 Civil 1824

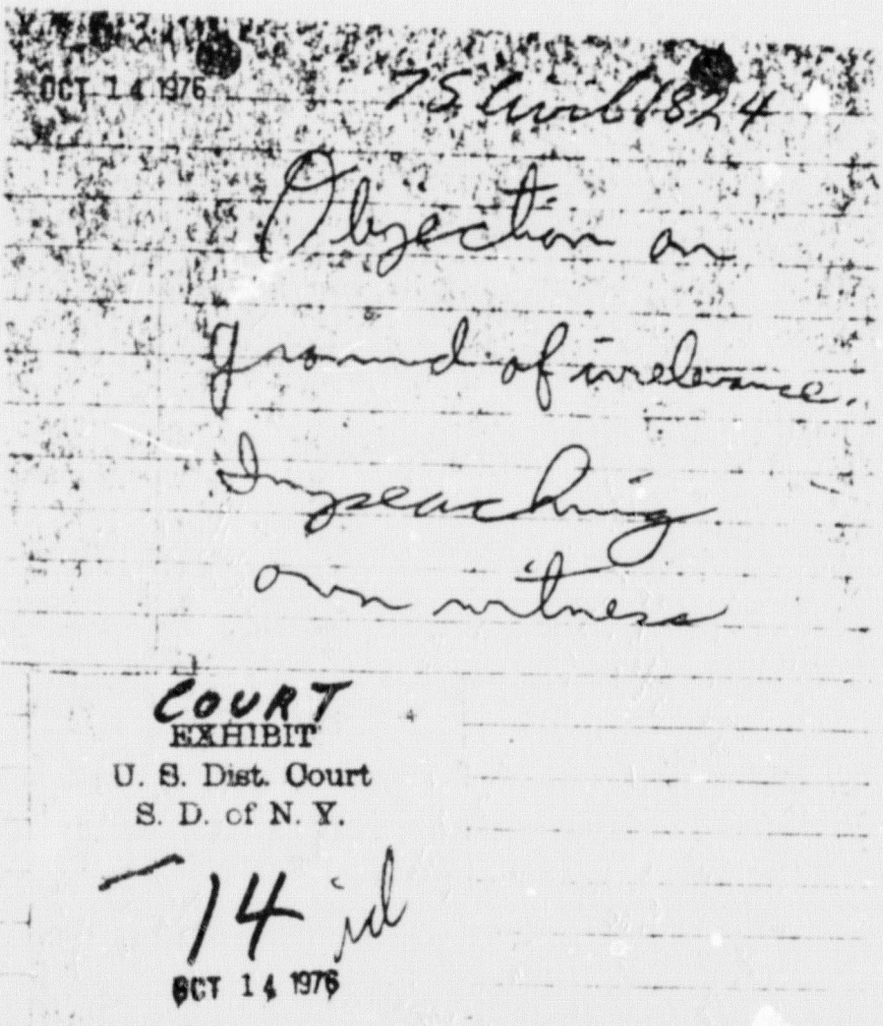
Objection to impeaching Plaintiff's character on a collateral matter.

COURT EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
12 id
OCT 14 1976

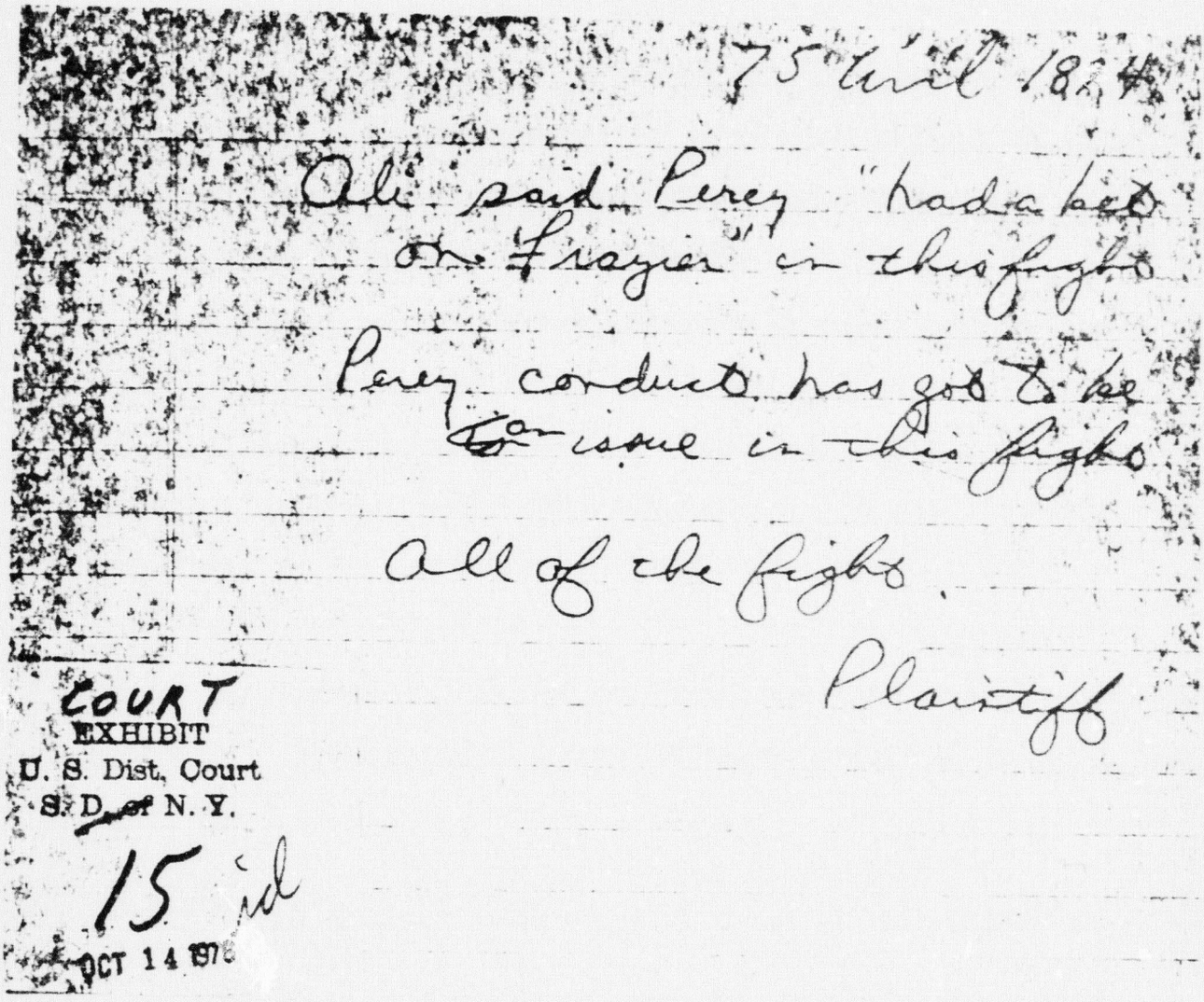
COURT'S EXHIBIT 13 FOR IDENTIFICATION.



COURT'S EXHIBIT 14 FOR IDENTIFICATION.



COURT'S EXHIBIT 15 FOR IDENTIFICATION.



75th Civil 1824

Ali said Perez "had a bet on Frazier" in this fight

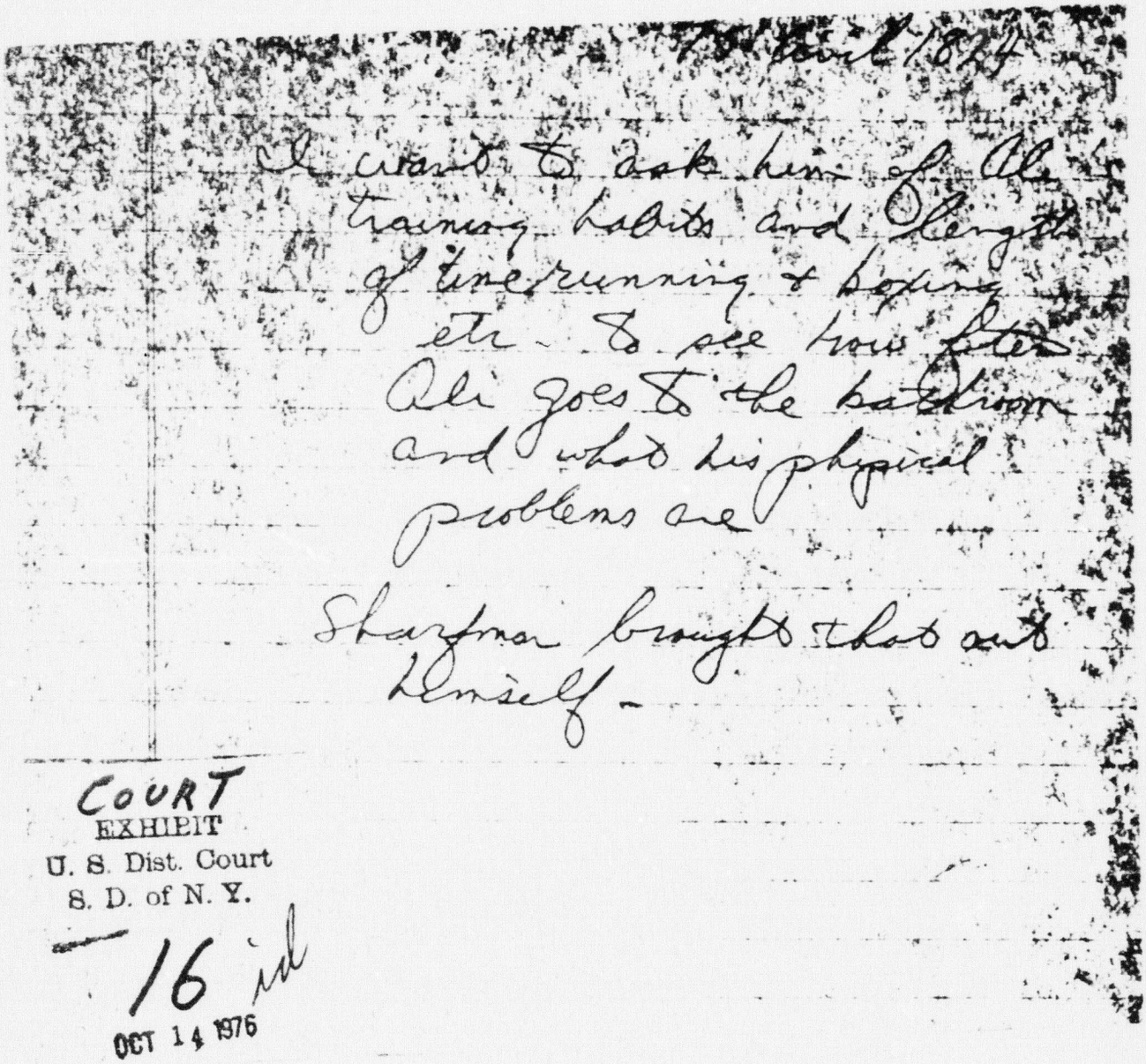
Perez conduct has got to be an issue in this fight

all of the fights.

Plaintiff

COURT EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
15 id
OCT 14 1976

COURT'S EXHIBIT 16 FOR IDENTIFICATION.



I want to ask him of the training habits and length of time running & boxing etc - to see how Ali goes to the ballroom and what his physical problems are

Sharfman brought that out himself -

COURT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
16
OCT 14 1976

COURT'S EXHIBIT 19 FOR IDENTIFICATION.

75 Civil 1824

I want to see Jacobs
here my tape.
- see if he hears the whistle
he agrees.

Plaintiff

may I bring my
TV in chambers for
Guest with Mr. Jacobs
for 10 minutes.

COURT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
19
OCT 15 1976

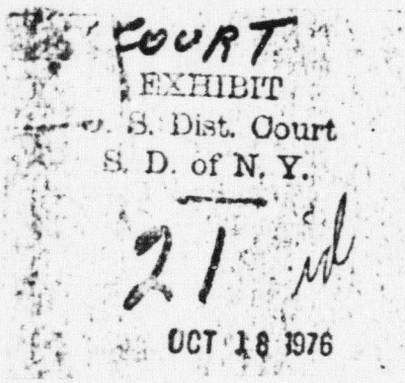
COURT'S EXHIBIT 21 FOR IDENTIFICATION.

May we please have a statement of the charges made by the Judge to the Jury.

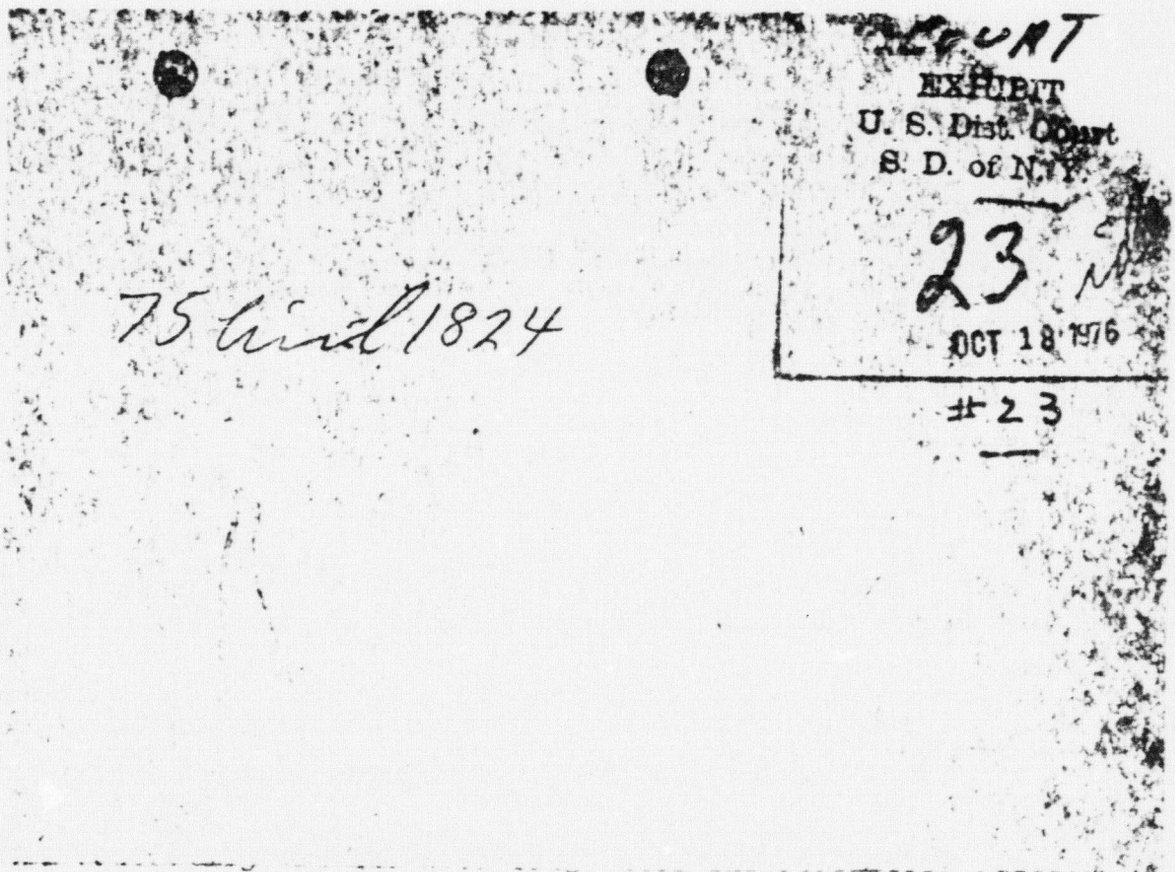
And the Statement made by Perez to the Press Conference.

RUTH McCOMB

75 Civil 1824
October 18, 1976.



COURT'S EXHIBIT 23 FOR IDENTIFICATION.

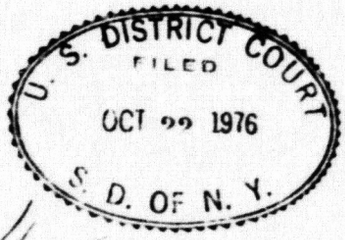


"He [Ali] purposely did the rabbit punching. Chuck did not do it purposely. If there is one man who fought dirty last night, I think it was Ali."

"A clean knockdown. Ali tripped on his own feet but he went down from the effect of the punch, in my opinion. He's just embarrassed because a man like Wepner knocked him down."

JUDGMENT APPEALED FROM.

Pollack, J



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

ANTHONY PEREZ, JR.

Plaintiff : 75 Civil 1624 (MP)

-against- :

MUHAMMAD ALI, a/k/a Cassius Clay

Defendant and Third Party Plaintiff : JUDGMENT

-against- :

AMERICAN BROADCASTING COMPANIES, INC., and ABC SPORTS, INC. :

Third party Defendants

- X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Milton Pollack, United States District Judge, and a jury, on October 12,13,14,15 and 18, 1976, and the Court having granted plaintiff's motion dismissing the second and third counterclaims of defendant Ali as against plaintiff, without prejudice, and without costs, and the jury having returned a partial verdict in favor of defendant Ali, and the jury also having found in favor of the plaintiff as against defendant

JUDGMENT APPEALED FROM

Ali on the counterclaim, and the Court having dismissed the third party claimover of the defendant third party plaintiff against the third party defendants, and the counterclaims of the third party defendants against defendant third party plaintiff are dismissed, it is,

ORDERED, ADJUDGED and DECREED: That defendant MUHAMMAD ALI, a/k/a Cassius Clay have judgment against plaintiff ANTHONY PEREZ, JR., dismissing the complaint, it is further,

ORDERED, ADJUDGED and DECREED: That the counterclaims of defendant Ali against plaintiff Perez are hereby dismissed, without prejudice, and without costs, and it is furhter,

75 civil 1624 - Judgment Cont'd - Pollack, J.

ORDERED: That the claimover of defendant third party plaintiff Ali against third party defendants AMERICAN BROADCASTING COMPANIES, INC., and ABC SPORTS, INC., be and is bereby dismissed, and it is further,

ORDERED: That the counterclaim of third party defendants against third party plaintiff is hereby dismissed for failure of proof.

Dated: New York, N.Y.
October 22, 1976

Raymond F. Burghardt
Clerk

JUDGMENT APPEALED FROM

At a [illegible] Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the 12th day of OCTOBER in the year of our Lord, One Thousand Nine Hundred and SEVENTY-SIX

PRESENT:
HONORABLE: JUDGE POLLACK
United States District Judge.

ANTHONY PEREZ, Jr.

-vs-

MUHAMMAD ALI, a/k/a Cassius Clay
deft. & 3rd Pty Pltff.

-vs-

AMERICAN BROADCASTING COMPANIES, INC.
and
ABC SPORTS, INC., 3rd Pty Defts.

75 Civil 1824
Docket No.

Now comes the Plaintiff By Henry H. Lipsig, P.C., 100 Church St., NYC 10007. 732-9000 By--Edw. B. Williams

& 3rd Pty Pltff.

and moves the trial of this cause. Likewise comes the Defendant by Greenman, Meade, Wasserman, Shaffren & Carpenter, 521 Fifth Ave, NYC 10017. 687-0464 -by-Richard Sharma, Julie Sharma, Esqs. -of Counsel- -for- Def't. (ABC) -and- -E Coudert Brothers, 200 Park Ave NYC 10017. 973-2900 -and- Cahill Gordon & Reindel & David B. Wolf

Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial. OCT 12 1976

OCT 13 1976 - Trial continued OCT 14 1976 Trial Contd.

OCT 15 1976 - Trial Contd. ALL PARTIES REST. PLAINTIFF MOVES TO DISMISS THE COUNTERCLAIM - THE 2ND and 3rd Counterclaims of defendant ALI against the PLAINTIFF are DISMISSED without prejudice and without costs. All other motions are denied.

OCT 18 1976 TRIAL CONTD. & CONCLUDED. -PARTIAL VERDICT (4 P.M.) The jury has found for the deft. ALI as against the Pltff. PEREZ. -- On the basis of the partial verdict the complaint is DISMISSED.

JURY VERDICT (4:15 P.M.) - The jury finds for the Pltff. PEREZ as against

JUDGMENT APPEALED FROM

the deft. ALI on the counterclaim. -- On the basis thereof the counterclaim of the deft. ALI against pltff. PEREZ is DISMISSED, and the 3rd Party claimover of the deft. 3rd Party Pltff. against the ~~2~~ 3rd Party defts. ABC and ABC SPORTS, INC. is DISMISSED. The ~~xxxxx~~ counterclaim of the 3rd Party defts. versus ALI are DISMISSED for failure of proof.

(E.Whittet, & M. Cohen, Rptrs.) POLLACK, J.

(AN EXTRACT OF THE MINUTES)

R. Cozenza
Rm 1506

375—Affidavit of Service The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

NEW YORK SUPREME COURT APPELLATE DIVISION FIRST DEPARTMENT

PEREZ

VS

MUHAMMAD ALI

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

ROBERT FORD being duly sworn,

deposes and says that he is over the age of 21 years and resides at 755 Hancockst BKLY N NY

That on the 17th day of feb, 1977 at

he served the annexed joint appendix upon

Freeman Meade Wasserman & Sharfman, 551 Fifth Avenue, NY, NY

Coudert Brothers, 200 Park Avenue, NY, NY

in this action, by delivering to and leaving with said attorneys

two copies true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 17

day of february, 1977

Robert L. Ford

Roland W. Johnson

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977